1953 **File No.** Cr. A 181 / 53

Legal **DEPARTMENT**

A **BRANCH**

Examined

cp 14/6

Subject:— Criminal Appeals

vs the High Court of Bombay

against the order of acquittal

from Bijapur District

127(6)

File No. Cr. A Bij /53

530-A

No. M.G.P. 1061.
Bijapur, 15-12-1952.

The Secretary to Government,
Legal Department, Bombay.

Subject ;- Appeal against acquittal passed on 27-10-1952 by the Addl. S.J. Bijapur Sessions Case No. 49/1952 — Proposal for preferring the

I forward herewith two copies of the report No. 1146 dated 5-12-1952 of the Public Prosecutor, Bijapur along with two uncertified copies of judgment against whic an appeal is now proposed to be filed and extracts rrom relevant and important evidence for perusal. Translations of relevant exhibits which are in regional language are also sent.

I agree with the P.P. that there is sufficient evidence against the three accused to sustain a conviction for offence punishable under section 304(1), read with section 34, Indian Penal Code, and requestx you to move Government to prefer an appeal against acquittal.

The P.P. has already sent to you a copy of his report along with a certified copy of judgment and copies of important exhibits.

The present address of all the three accused is the same as mentioned in the judgment of the Additional Sessions Judge.

THE

30803
A-20-12-52

O.S.cigned By
D.M.

For District Magistrate, Bijapur.

3 of 7

No. 1146 of 1952.
Date:- 5-12-52

To.

The District Magistrate,
BIJAPUR.

Subject:- Proposal for preferring an appeal against the order of acquittal of the accused in Bijapur Sessions Case No.49 of 1952.

Sir,

I have the honour to state that the accused in the above case were tried by the Additional Sessions Judge Bijapur in Sessions Case No.49 of 1952 on a charge of murder infurtherance of their common intention punish-able under section 302 read with section 34 of the Indian Penal Code. The Learned Additional Sessions Judge acquitted them on 27-10-1952.

(2). The Judgment was delivered on 27-10-1952. I applied for certified copy on 28-10-1952. It was ready for delivery on 25-11-1952 and it was delivered to me on that day.

Uncertified copies of the several exhibits were got typed in four duplicates and the translations of some exhibits were made and got typed. The typed copies were ready yesterday.

The period of limitation for filing the appeal is six months plus 27 days(time requisite for obtaining certified copy of Judgment) from 27-10-1952.

(3). I am of opinion that this is a fit case for preferring an appeal against the order of acquittal. I therefore propose that Government may be moved to prefer appeal in the High Court and to move the High Court thereby to convict the accused under section 304(1) read with section 34 of the Indian Penal Code.

(4). The Learned Judge has set out the facts in his Judgment. I need not repeat the same here.

(5). The Learned Judge has held for reasons appearing in Para 10 of his Judgment that the deceased

Gangappa died a homicidal death on 24-3-1952.The offence in the case would amount to culpable homicide not amounting to murder punishable under section 304(1) of the I.P.C.Please see substance of my arguments at Exh.44. The fact that the assailants went away leaving the deceased alive is a circumstance which would go to show that the assailants had no intention to cause death, but that they had the intention of causing bodily injuries which were likely to cause death.The offence in this case would thus be one that would be punishable under section 304(1) of the Indian Penal Code.

(6). The sketch in this case is at Exh.32.The evidence of Bandawa, the wife of the deceased(Exh 7), and the evidence of Somalingappa the son of the deceased (Exh.9), shows that they and the deceased were in their field S.No.132/1, that the wife and the son left the field at the time of sun set, that the deceased remained in the field, that the wife and the son went home and that when they left the field the accused were in the field of accused No.1 viz: S.No.132/2.

(7). The place of the offence is in S.No.132/2 just near the way to the village.That is clear by reference to the sketch Exh.33. The eye balls art No.9 of the deceased that were taken out by the assailants were found to be lying there. The blood stained earth and stones there, art Nos. 7 and 8, are certified by the Chemical Analyser to be stained with human blood(vide Exhs 16 and 17 which are the report of the Chemical Analyser and that of Serologist).

(8). The time of the offence is between 7 and 7-30 P.M. That is clear by reference to the evidence of Exhs 7 and 9 who left the field at the time of sun set and by their further evidence and the evidence of Exhs 4,5 and others who on hearing cries of agony went to the place and found

5 4/5

the deceased Gangappa lying injured.The scene of the offence and the fieldsof the deceased and or accused Nos 1 and 2 are about 2 furlongs from the village ~~x~~ Sorgaon.The fields are in the limits of Mudhol but are very near the village Sorgaon.

(9). It is also clear that Gangappa was injured there by more than one person.He had as many as 24 injuries.His eye balls had been removed. A stick was found to be lying there.A knife was also found to be lying there in the earth.Another knife as will be ~~personally~~ presently shown was found in the house of accused Nos. 1 and 2.It would thus be reasonable to suppose that 3 persons assaulted the deceased.

(10). Bandawa and Somalingappa left the ~~filed~~ field at the time of sun set.They reached home and in a short time thereafter they and other villagers heard cries of agony and went to the place and found Gangappa lying injured.There was thus hardly any time for any body to ponder over and to deliberate ~~xxxxx~~ and to create a false story.

(11) On people going there and questioning Gangappa, Gangappa narrated that he was assaulted by the 3 accused persons.Dundappa Talwar Exh.5 was one of the persons who heard Gangappa say so.Dundappa returned to the village.One other person viz Sadasiv Exh.4 who also had gone to the scene returned to the village, told Dundappa Talwar to inform the Patil if he was in the village or else to Police at Mudhol. The Patil was not in village.Dundappa Talwar thus left for Mudhol.He met Patil on the way. He told the Patil about the incident and both went to the Police station and Dundappa Talwar gave information to the Police Sub Inspector about what Gangappa had said about the assault on him.The Sub Inspector reduced his inform--ation to writing and it is Exh.6 in the case.It was

then at 9 P.M.In this connection the evidence of Dundappa Talwar Exh5, the evidence of the Police Patil Exh.20, Dundappa's information to Police Sub Inspector Exh.6, and the evidence of the Sub Inspector Exh.28 may be read.The evidence of Sadashiv Exh.4 has also to be read here.

(12). The offence was committed at about 7 or 7-30 P.M. Dundappa Talwar who went to the scene and heard from an injured that the accused belaboured him went to Mudhol which is 2 miles from Soragaon and gave information at 9 P.M.It is at Exh.6.Therein he has set forth about his going to the scen , and about Gangappa mentioning the accused to be his assailants.

(13). This Dundappa Talwar has no motive to make a false statement.He gave information (Exh.6) at Mudhol at 9 P.M. and thus there was no time for any body to ponder over and to create a false story.The Learned Judge ought to have believed this witness and ought to have held thereby that the deceased Gangappa mentioned the accused to be his assailants.

(14). Sadashiv Patil Exh.4 is a Law Graduate residing at Sorgaon which is his native Place.He too had gone to the scene of offence from the village. He was told by Gangappa that three persons of Mudhol had caused him the injuries, that Gangappa mentioned the names of accused 1 and 2 as his assailants and that Gangappa added that he knew the third assailant but that he did not remember his name.It is true that other witnesses say that Gangappa mentioned the names of the three accused. The deceased had been greatly injured. In this state of things he mentioned to Sadashiv that three persons of Mudhol assaulted him.The three accused are of Mudhol. Gangappa mentioned the names of accused 1 and 2.He also added that he did not(in the pain in which he was) then remember the name of the third assailant.The other

persons then perhaps on questining again came to know from Gangappa the third assailant to be accused No.3. The learned Judge ought to have accepted the evidence of Sadashiv at least as against accused Nos 1 and 2. There was a proceeding under section 145 Cr.P.C. between the deceased and this Sadashiv. That had ended ~~the~~ ten months before the offence. Sadashiv is a graduate. He bears no grudge against the accused. The learned Judge ought to have accepted the evidence of Sadashiv.

(15). Bandawa, Sadashiv, and Mallappa (Exs 7, 14 and 23) also depose that Gangappa mentioned the three accused to be his assailants.

(16). After Dundappa Talwar gave information to the Sub Inspector Exh.28, the latter went to the scene in a motor along with the Police Patil Ex 20 and to both of them the deceased Gangappa told that the three assailants were the three accused. The learned Judge ought to have accepted their evidence on this point. Gangappa had ~~xxxxxxxxx~~ received many injuries and told the Sub Inspector to take him soon to the dispensary with the result that the Sub Inspector took him in motor to Mudhol dispensary. The Police Patil Exh.20 bears no grudge against the accused. The learned trial Judge thus erred in not believing these two witnesses.

(17). The Sub Inspector took ~~xx~~ the deceased to Mudhol Dispensary where he reached about 10 P.M. It was night time and the Doctor was not present in the Dispensary. The Sub Inspector asked his constable to write a yadi to the Medical Officer and also to II Class Magistrate. The Sub Inspector then began to record the statement of Gangappa in the presence of Panchas. one of these namely Anna Exh.10 is examined in this case. At the time ~~of~~ at which the statement of Gangappa was

being recorded, the constable wrote yadis to the Medical Officer and the Second Class Magistrate and the Sub Inspector signed thereon for being taken to those officers. The office copies of those yadis are produced in the case at Exhs 31 and 32.The Sub Inspector proceeded to record the dying declaration. That dying declaration is at Exh.11. Gangappa was literate but he could not then sign as his eyes had been removed. The Sub Inspector thus took his thumb mark below Exh.11. The recording of the dying declaration was completed at 10-15 P.M.

The constable who had gone to the Medical Officer and the Second Class Magistrate with the Yadis could not find the Medical Officer in his house as he had then gone out. The Medical Officer returned home at about 10-15 P.M and on his learning that a Police Constable had come to call him, he went to the Hospital.The Second Class Magistrate Exh.27 on being called by the constable went to Hospital at about 11 P.M. Gangappa died in the premises of the Hospital at, about 10-45 P.M.

In view of the evidence of the Sub Inspector Exh.28, of the Medical Officer Exh.14, and of the Second Class Magis--trate Exh.20, the trial Court should have held that Gangappa made the declaration Exh.11 in this case.The evidence of the Panch Exh.10 in whose presence the dying declaration was recorded ought to have been believed by the trial Court.

(18). The evidence of the Medical Officer Exh.14 is consistant with the idea that Gangappa was conscious for about 2 to 3 hours after he was injured.

(19). The learned Judge should have therefore held that the deceased stated to the villagers,to the Sub Inspector and Patil after their arrival, and ultimately made the dying declaration Exh.11 in the presence of Panchas in the premises of Mudhol Dispensary.

(20). The attack on Gangappa was at close quarters, by

persons who were ~~know~~ to the deceased. It cannot there-
-fore be said that there was any mistake by Gangappa in identifying the assailants.

(21) The offence was committed at about 7 P.M. and within short time thereafter Gangappa openly said to the villagers that assembled there that he was assaulted by these 3 accused. It cannot therefore be said that there was any pondering or tutoring of Gangappa

(22). Gangappa made the dying declarationon ~~the~~ on 3 occassions. He was then in imminent expectation of death. They are true, and in view of the ruling in I.L.R. 1940 Madras 158 which has been approved of by our Supreme Court in Criminal Appeal No.10 of 1952 which has been referred to and followed by our High Court in Confirmation Case No.7 of 1952, the dying declarations alone can form the basis of conviction.

(23) The knife art No.6 which could cause the incised injuries was found in the house of accused Nos 1 and 2. The learned judge ought to have believed the evidence of Panch Exh.18 in this respect. Art No.6 is certified to be stained with human blood.

(24). The evidence of Exhs. 7 and 9 discloses that there was sufficient motive for the accused to commit the crime.

In view of what I have stated above I am of opinion that this is a fit case for moving Govt. to prefer an appeal to the HighCourt praying for conviction in respect of an offence punishable under section 304(1) read with section 34 of the Indian Penal Code.

The present address of the 3 accused is the same as in the lower court and it is clear by reference to their description in the Judgment.

I have sent this report along with copies of important Exhibits and Judgment in triplicate. I am

forwarding a copy of this ~~reference~~ report along with the certified copy of the judgment and copies of important exhibits to the Remembrancer of Legal Affairs, Bombay.

Yours Faithfully

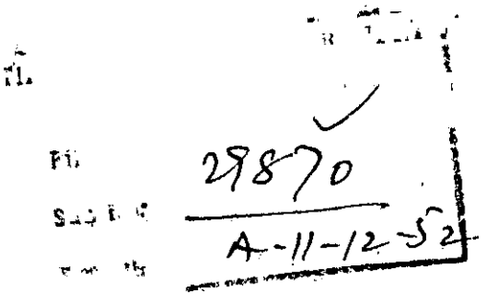
Ahmadi

Public Prosecutor, Bijapur.

No 1147 of 1952
5-12-1952

Duplicate Report forwarded with respects to the Remembrancer of Legal Affairs, Bombay with certified copy of judgment and copies of important exhibits.

Ahmadi
Public Prosecutor,
Bijapur



Opinion in the case of State Vs. Annappa Laxamrao Mane and Others.

.....

In this case three persons were charged under section 302 read with section 34 of the Indian Penal Code in respect of the murder of one Gangappa Basappa Gombi in the Court of the Additional Sessions Judge, Bijapur. They were tried by the learned Sessions Judge with the aid of Assessors.

2. The prosecution alleged that Survey No.132 of Mudhol belonged to the deceased Gangappa and Channappa who were brothers, that there was a partition between them and half the portion of the same was sold by Channappa to accused no.1. Mudhol was two miles away from Sorgaon where the deceased resided. A cart-track from Sorgaon to Shirol passed through Survey No.132 dividing it into two strips and the said field, which though situate within the limits of Mudhol was two furlongs away from Sorgaon. Eight days before the incident, deceased Gangappa, his wife Bandawwa, his 14 years old son Somalingappa and his daughter Kasawwa had gone in Survey No.132 and they were repairing a bund on the southern side of their strip by taking stones from the Government Nala. At that time accused no.1 threatened Gangappa and told him that some day he (accused no.1) would remove the eyes of Gangappa and the deceased replied that he may do his worst. Accused no.1 is the father accused no.2 and accused no.3 is a separated

nephew of accused no.1 Accused nos. 1 and 2 resided jointly. On 24th March 1952, the deceased with his son Somalingappa, wife Bandawwa and daughter Kasawwa had gone to his stirp of Survey No.132 and were there till sunset. ~~There~~ At about the sunset, Somalingappa, Bandawwa and Kasawwa returned to their house whereas the deceased remained in the strip. After Bandawwa reached home and she was lighting a lamp, she heard cries from the direction of the field. She therefore with her children hurried to the field. At about same time other people were attracted by the cries and they were Shadashiva Patil, pleader, Dundappa Talwar and Nallabha Adawi. At about this time one Shivappa Nadar while he was returning home by the Shirol road, saw the actual attack ~~h~~ taking place but being frightened he ran away and went hom and did not inform anyone. When Bandawwa and her two children arrived at the spot, the accused had run away. They found that the eyes of the deceased were removed and there were many other injuries and the deceased was lying in the land which was in the strip of the accused. The deceased was able to speak and he told Bandawwa and her children that it was accused nos.1 to 3 were his assailants. Thereupon Sadashiv asked Dundappa to inform the Police Patil but the Police Patil was not at home and therefore Dundappa went to Mudhol. On his way, he met Venkangouda, the Police Patil and informed ~~x~~ him about the incident. They

both went to the Police Station at Mudhol reaching there at 9 p.m. and informed the Police Sub-Inspector about the incident. The Police Sub-Inspector took down the gist of the complaint and entered it in the First Information Report Book, the entry being Ex.29 in the case. The Police Sub-Inspector entered the offence as one under section 325 of the Indian Penal Code. The Police Sub-Inspector went in a motor truck and reached Mudhol at 9-30 p.m. The deceased told the Police Sub-Inspector that accused nos. 1 to 3 were his assailants and he requested him to remove him to the dispensary. He was removed to the dispensary at Mudhol at 10 p.m. but the Doctor and the Compounder were not present. Thereupon the Police Sub-Inspector prepared two yadis one to the Magistrate and the other to the Doctor and sent for the panchas. In the meanwhile, the Police Sub-Inspector recorded dying declaration in the truck in the presence of the panchas viz. Anna Shitole and Venkappa Shinde. thumb impression of the deceased was taken on the statement. The said statement of the deceased implicated accused nos.1 to 3 as his assailants. Soon after the dying declaration was recordéd Gangappa died at about 10-45 to 10-46 p.m. in the truck. The Doctor and the Magistrate arrived at about the same time and saw that Gangappa was dead. An inquest panchnama was made and it was found that the deceased had received not less than 24

injuries which were caused by a hard and blunt substance Accused nos. 1 to 3 were arrested on 25th March 1952 and articles 7 to 13 were attached from the person of the accused. articles 5 and 6 were found from the house of accused no.1 and articlex 6 which is a penknife was found to be stained with human blood. On these facts the accused were charged of the offences as stated above.

3. The defence of the accused was a total denial.

4. The learned Judge found that the deceased died a homicidal death but the prosecution failed to prove the alleged motive as Bandawwa stated that there were no threats given at the bund as alleged by the prosecution. According to the evidence of Shivappa Madar, who was an eye-witness, he stated that he did not notice the weapon with which the deceas was attacked nor did he see the injuries to the deceased but he had deposed in the Trial Court that the eyes of the decease were removed by article 6 by accused no.2. In the Sessions Court he went back and stated that he did not see the weapon with which the injury was caused. As regards Sadashiva Patel, the learned Judge pointed out in his judgment that he had not much of active practice and at one time he himself had made an application against the deceased under section 145 of the Criminal procedure code and perhaps as he was afraid that

he might be implicated in the crime, he deposed against accused nos. 1 to 3. According to the evidence of Dundappa, he had gone to give information to Police Patil and the learned Sessions Judge did not feel sure whether he was present at the time when the deceased stated that he was assaulted by accused nos. 1 to 3. On appreciation of evidence in the manner indicated above, the learned Sessions Judge agreed with the opinion of three assessors, who came to the conclusion that the accusedwere not guilty. He differed from the fourth assessor who came to the conclusion that the accused were guilty and acquitted them.

4. As regards the dying declaration, the learned Sessions Judge held that the same was brought about in circumstances which arouse suspicion and therefore much reliance could not be placed on the same.

5. In my opinion, the appreciation of evidence by the learned Sessions Judge does not appear to be satisfactory. The fact that the offence took place at about 7-30 p.m. and within a couple of hours and a complaint was made to the Police that accused nos. 1 to 3 had committed the offence is very material and could not be overlooked. Before any dying declaration was recorded, the above entry was made and that was made because of the information conveyed by Dundappa who accompanied the Police Patil. Therefore Dundappa must have

been present when he along with Shadashiva Patil and Mallappa Adawi went to the scene of offence on hearing the cries from that direction and that the deceased told his wife, children and those present that accused nos. 1 to 3 had assaulted him. There is no reasons why the dying declaration should be regarded as suspicious and that the prosecution witnesses should be totally disbelieved.

6. I advise an appeal against the order of acquittal, though I do not feel sure of its result.

Bombay:

9th February 1953.

Government Pleader, High Court,

L.D.R.I.No. 30803
Dated 20-12-52

Submitted.

2. This is a proposal from the Public Prosecutor, Belgaum for an appeal to the High Court against the order of the Additional Sessions Judge, Belgaum dated 27-Oct-52.

3. The District Magistrate of Belgaum recommends/~~does not recommend~~ an appeal for conviction of the Accd. under s.304(2) r/w 34 IPC

4. The Public Prosecutor of Belgaum recommends/~~does not recommend~~ an appeal for conviction of the Accd. under s.304(1) r/w 34 IPC

5. The Government Pleader, High Court, Bombay ~~advises/does not advise~~ not consulted.

6. Administrative period expires on 27-1-53

Limitation period expires on 27-4-53.

7. Certified copy of judgment is need

and the correct latest addresses of the parties concerned ~~are~~/ are not received.

KML/18/9.

22/12

DS:(G)

RCA

Secy H D

D.S.(Criminal) A

Note word

Accused Nos. 1 and 2 are father and son and accused No.3 is the nephew of accused No.1. They were prosecuted for an offence under section 302 read with section 34 of the Indian Penal Code and tried by the Additional Sessions Judge, Bijapur, with the aid of assessors. Three of the assessors were of the opinion that the accused were not guilty. The Judge was also of the same opinion, and accordingly he acquitted them. Against that acquittal the Public Prosecutor and the District Magistrate recommend an appeal.

The deceased was one Gangappa. He had a brother Channappa and both of them together owned survey [illegible] No.132 within the limits of Mudhol. They partitioned the land and after the partition Channappa sold his portion of the land to accused No.1. It is the prosecution case that, about a week before the incident in which Gangappa died, Gangappa had been repairing the bund of his portion of the land from stones brought from a Govt. nalla. To this, according to the prosecution, accused No.1 took objection and threatened to take Gangappa's eyes out if he persisted. Gangappa asked accused No.1 to do his worst. A week later, that is to say, on 24-3-52, Gangappa with his wife Bandewwa and his 14-year old son Somalingappa were working in their field . At sunset the wife and son went home, leaving Gangappa alone in his field. At that time accused Nos. 1, 2 and 3 were in the neighbouring strip of land. Soon after the wife and son went home, they heard cries of agony proceeding from the direction of their field. Going there, they found Gangappa lying in the strip belonging to accused No.1. His eyes had been taken out and were lying in the

field....

field and he had on his person 24 injuries, out of which 10 were incised wounds and the rest were injuries caused by a hard and blunt substance. In three of the injuries there were fractures and the medical opinion is that these injuries were all ante-mortem and collectively sufficient to cause death in the ordinary course of nature. At the time when these persons arrived at the scene of offence, Gangappa was alive and he is alleged to have made a dying declaration in which he stated that it was accused Nos. 1, 2 and 3 who assaulted him. At that dying declaration the persons present besides the wife and son were Sadashiv Patil Pleader, Dundappa Talawar and Mallappa Adawi. Dundappa Talawar was sent to inform the Police Patil and as the Police Patil was not in the village, he proceeded to go to the Police Sub Inspector, Mudhol. On the way he met the Police Patil and then they proceeded to go. They reached the Police station at about 9 p.m. and his information was recorded. The Police Sub Inspector then proceeded to the scene of offence, arriving there at about 9.30 in a motor truck and according to the prosecution he also questioned Gangappa and was told that he had been assaulted by accused Nos. 1, 2 and 3. Thereafter he removed him to the dispensary at Mudhol, but at the dispensary the Medical Officer was not there and, therefore, he sent for the Medical Officer as well as a II Class Magistrate. As, however, Gangappa was getting serious, he recorded his dying declaration in the presence of panchas. Gangappa then died and it was after his death that the Magistrate and the Medical Officer arrived.

On these facts the accused were prosecuted. The accused denied their guilt and stated that this was an entirely false case against them.

The evidence led in the Sessions Court consisted of:-

(1)....

(1) The testimony of witness Shivappa Madavi, who is alleged to be an eye witness to the offence. He stated that he was passing by the two fields on his return home and he saw the deceased being assaulted by these three accused.

(2) The oral testimony of the five witnesses who speak to the dying declaration made by Gangappa immediately after the assault, namely, (i) the son of Gangappa, (ii) wife of Gangappa, (iii) Sadashiv Patil, Pleader, (iv) Dundappa Talawar and (v) Mallappa Adawi.

(3) The testimony of the Sub Inspector as regards the alleged dying declaration made to him when he came to the scene of offence at about 9.30 p.m.

(4) The testimony of one of the panchas regarding the dying declaration made at the Mudhol dispensary.

(5) The evidence of motive, namely, the incident which took place about a week before the present incident.

The evidence of motive was very weak. It was nobody's case that the deceased and accused were on bad terms. The incident of a week earlier was deposed to by the wife and the son of the deceased but in their Police statements they had not mentioned any threat given by the accused that the eyes of the deceased would be removed. The deceased himself had several enemies as proved by the documentary evidence led by the accused. The suggested motive against the accused does not, therefore, appear to be satisfactory.

The dying declaration made to the five witnesses was the principle evidence in the case. In that there was one material discrepancy; for,

according.....

according to Sadashiv Patil, Gangappa stated that the assault was made by accused Nos.1 and 2 and another person whom he knew but whose name he could not remember, whereas according to the other witnesses, Gangappa stated that the assault was made by the three accused. Having regard to this discrepancy and to the fact that this assault took place in the dark, the Judge came to the conclusion that it was not possible for him to place reliance on that testimony.

As regards the dying declaration made to the P.S.I. at 9.30 p.m., not much importande can be attached to it for by that time several people had already assembled near the deceased and a considerable time had elapsed; nor can much importance be attached to the alleged dying declaration made at the Mudhol dispensary. In fact, there is considerable doubt whether any such dying declaration was made at the dispensary. The panch witness who was examined in regard to this dying declaration appears to be a man of straw.

As regards the testimony of the eye witness, the learned Judge has pointed out several grounds to show that that testimony could not be accepted and that he appears to be a got-up witness. The Public Prosecutor himself does not rely on that testimony and, therefore, it is not necessary to discuss his evidence.

The whole case, therefore, practically rests on the dying declaration made to the five witnesses. Now this dying declaration does get corroboration from the first information and from the fact that a blood-stained knife was found from the house of accused No.1 at the time of the search. The Judge holds that there was a possibility of planting in respect of this knife. Even if that be so, there do not appear to be sufficient reasons to reject the evidence of the five witnesses relating to the dying declaration. The discrepancy pointed out is no doubt there, but it is possible that

although....

although the deceased had stated that he did not remember the name of the third man, others ~~could~~ may have questioned him and the wife and the son having known who were the persons in the field of accused No.1 at the time they left the field, might have believed that the third person meant by Gangappa was accused No.3. No doubt the matter is one of appreciation of evidence and no doubt the majority of the assessors have taken the view that the evidenc is not reliable. But that view is based on the ground that there is absence of sufficient motive. It does not take sufficiant account of the five witnesses to the dying declaration It appears to me, therefore, that the case is one worth placing before the High Court, but before this is done, the Govt. Pleader, High Court, may be consulted.

A/

Rabar. V Yaleb
12.1.53

A' may be done
R
12/1

p13

Subd
GPs opinion is rcd. He advises an appeal tho' not confident of success.

11/2

19.1.53 We may accept GP's advice
Rabar V Sub. 19/2

Cr.No. 3165/A
18-2-53.

MLaw

The recent pronouncement of the Supreme Court enhances the value of dying declarations
Cr 43 We may accept GP's advice and file
18/2/53 an appeal

19.2

9/3
19.2

MC(L)
CM } for term
pl condoning delay.

19/2

17/2

Criminal Appeals.
In the High Court, Bombay-
against acquittal (Bijapur).

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 3927/A
Bombay Castle, 27th February 1953.

Letter from the District Magistrate, Bijapur No.MGP 1061 dated the 15th December 1952 forwarding papers in the case noted in the margin and requesting that an appeal under section 417 of the Code of Criminal Procedure 1898, may be made to the High Court, Bombay against the order of acquittal passed by the Additional Sessions Judge, Bijapur on 27-10-1952 in respect of the a ccused in the case noted in the margin.

In the Court of the Additional Sessions Judge, Bijapur.

Sessions Case No.49 of 1952.

State
vs.
Annappa Laxamrao Mane)
Baburao Annappa Mane) Accused.
Basawant Jijoba Mane)

(Offence under section 302 r/w 34 I.P.C.).

RESOLUTION: The Government Pleader, High Court, Bombay is directed to file an appeal in the High Court, Bombay under section 417 of the Code of Criminal Procedure, 1898, against the order of acquittal passed by the Additional Sessions, Judge, Bijapur on 27.10.1952 in respect of the a ccused in the case referred to in the margin.

By order and in the name of the Governor of Bombay,

Original Sd/- Akbar Y. Sarela 27/2

Akbar S. Sarela,
Deputy Secretary to Government.

To
The Home Department,
The District Magistrate, Bijapur,
The Government Pleader, High Court, Bombay (with the papers of the case received with the letter of the District Magistrate, referred to above),
The Public Prosecutor, Bijapur,
The Dy. Inspector General of Police, Southern Range, Belgaum.

KML/26

Jones 27/2

No. 7 Legal Department,
Bombay Castle (Bombay No.1), March 1953.

To

The Government Pleader,
High Court,
Bombay.

Subject:- Criminal Appeal No. of 1953 (BY Govt.) in Sessions Case No. 49 of 1952, on the file of the Additional Sessions Judge, Bijapur. (State Vs. Annappa Laxamroa Mane and others.)

Sir,

In continuation of Government Resolution, Legal Department No. 3927/A dated the 27th February 1953, I have the honour to forward herewith a copy of the note recorded in this office for your guidance.

Yours faithfully,

Subd
6/3

Deputy Secretary to Government.

BM.
6.3. 6/3

Not necessary to send the note as GP has taken the same view
6/3

D.S. (G)

Note recorded in the Office of the R.L.A.

Accused Nos. 1 and 2 are father and son and accused No.3 is the nephew of accused No.1. They were prosecuted for an offence under section 302, read with section 34 of the Indian Penal Code and tried by the Additional Sessions Jydge, Bijapur, with the aid of assessors. Three of the assessors were of the opinion that the accused were not guilty. The Judge was also of the same opinion, and accordingly he acquitted them. Against that acquittal the Public Prosecutor and the District Magistrate recommend an appeal.

The deceased was one Gangappa. He had a brother Channappa and both of them together owned survey No.132 within the limits of Mudhol. They partitioned the land and after the partition Channappa sold his portion of the land to accused No.1. It is the prosecution case that, about a week before the incident in which Gangappa died. Gangappa had been repairing the bund of his portion of the land from stones brought from a Government nalla. To this, according to the prosecution, accused No. 1 took objection and threatened to take Gangappa's eyes out if he persisted. Gangappa asked accused No.1 to do his worst. A week later, that is to say, on 24th March 1952, Gangappa with his wife Bandewwa and his 14 year old son Somalingappa were working in their field. At sunset the wife and son went home, leaving Gangappa alone in his field. At that time accused Nos. 1, 2 and 3 were in their neighbouring strip of land. Soon after the wife and son went home, they heard cries of agony proceeding from the direction of their field. Going there, they found Gangappa lying in the strip belonging to accused No.1. His eyes had been taken out and were lying

in the field and he had on his person 24 injuries, out of which 10 were incised wounds and the rest were injuries caused by a hard and blunt substance. In three of the injuries there were fractures and the medical opinion is that these injuries were all ante-mortem and collectively sufficient to cause death in the ordinary course of nature. At the time when these persons arrived at the scene of offence, Gangappa was alive and he is alleged to have made a dying declaration in which he stated that it was accused Nos. 1, 2 and 3 who assaulted him. At that dying declaration the persons present besides the wife and son were Sadashiv Patil Pleader, Dundappa Talawar and Mallappa Adawai. Dundappa Talawar was sent to inform the Police Patil and as the Police Patil was not in the village, he proceeded to go to the Police Sub-Inspector, Mudhol. On the way he met the Police Patil and then they proceeded together. They reached the Police station at about 9 p.m. and his information was recorded. The Police Sub-Inspector then proceeded to the scene of offence arriving there at about 9-30 in a motor truck and according to the prosecution he also questioned Gangappa and was told that he had been assaulted by accused Nos. 1, 2 and 3. Thereafter he removed him to the dispensary at Mudhol, but at the dispensary the Medical Officer was not there and, therefore, he sent for the Medical Officer as well as a II Class Magistrate. As, however, Gangappa was getting serious, he recorded his dying declaration in the presence of panchas. Gangappa then died and it was after his death that the Magistrate and the Medical Officer arrived.

On these facts the accused were prosecuted. The accused denied their guilt and stated that this was an purely false case against them.

The evidence led in the Sessions Court consisted of:-

(1)....

(1) The testimony of witness Shivappa Madavi, who is alleged to be a n eye witness to the offence. He stated that he was passing by the two fields on his return home and he saw the deceased being assaulted by these three accused.

(2) The oral testimony of the five witnesses who speak to the dying declaration made b Gangappa immediately after the assault, namely, (i) the son of Gangappa, (ii) wif of Gangappa, (iii) Sadashiv Patil, Pleade (iv) Dundappa Talawar and (v) Mallappa Adawi.

(3) The testimony of the Sub Inspector as regards the alleged dying declaration made to him when he came to the offence at about 9.30 p.m.

(4) The testimony of one of the panchas regarding the dying declaration made at the Mudhol dispensary.

(5) The evidence of motive, namely, the incident which took place about a week before the present incident.

The evidence of motive was very weak. It was nobody's case that the deceased and accused were on bad terms. The incident of a week earlier was deposed to by the wife and the son of the deceased but in their Police statements they had not mentioned any threat given by the accused that the eyes of the deceased would be removed. The deceased himself had several enemies as proved by the documentary evidence led by the accused. The suggested motive against the accused does not, therefore, appear to be satisfactory.

The dying declaration made to the five witnesses was the principle evidence in the case

In that there was one materia discrepancy; for according to Sadashiv Patil, Gangappa stated that the assault was made by accused Nos. 1 and 2 and another person whom he knew but whose name he could not remember, whereas according to the other witnesses Gangappa stated that the assault was made by the three accused. Having regard to this discrepancy and to the fact that this assault took place in the dark, the Judge came to the conclusion that it was not possible for him to place reliance on that testimony.

As regards the dying declaration made to the P.S.I. at 9.30 p.m., not much importance can be attached to it for by that time several people had already assembled near the deceased and a considerable time had elapsed; nor can much importance be attached to the alleged dying declaration made at the Mudhol dispensary. In fact, there is considerable doubt whether any such dying declaration was made at the dispensary. The panch witness who was examined in regard to this dying declaration appears to be a man of straw.

As regards the testimony of the eye witness, the learned Judge has pointed out several grounds to show that that testimony could not be accepted and that he appears to be a got-up witness. The Public Prosecutor himself does not rely on that testimony and, therefore, it is not necessary to discuss his evidence.

The whole case, therefore, practically rests on the dying declaration made to the five witnesses. Now this dying declaration does get corroboration from the first information and from the fact that a blood-stained knife was found from the house of accused No.1 at the time of the search. The Judge holds that there was a possibility of planting in respect of this knife. Even if that be so, there do not appear to be sufficient

reasons to reject the evidence of the five witnesses relating to the dying declaration. The discrepancy pointed out is no doubt there, but it is possible that although the deceased had stated that he did not remember the name of the third man, others may have questioned him and the wife and the son having known who were the persons in the field of accused No.1 at the time they left the field. might have believed that the third person meant by Gangappa was accused No. 3. No doubt the matter is one of appreciation of evidence and no doubt the majority of the assessors have taken the view that the evidence is not reliable. But that view is based on the ground that there is absence of sufficient motive. It does not take sufficient account of the/~~xiew~~ five witnesses to the dying declaration. It appears, thereford, that the case is one worth placing before the High Court, [illegible]

G.C.P.—(J) J 157—12.000—9-52
G O., L.D., No. 1193 dated 7-12-15

[Govt. Pl. H.C Bom.—Spl. Form No. 2

No. 2561

From

THE GOVERNMENT PLEADER, HIGH COURT, BOMBAY;

To

THE SECRETARY TO GOVERNMENT, LEGAL DEPARTMENT, BOMBAY;

~~THE PUBLIC PROSECUTOR, BOMBAY;~~

~~To~~

THE DISTRICT MAGISTRATE OF
THE COLLECTOR OF ~~Bijapur~~.

Bombay.....19-3-.....*195* 3.

SIR,

Referring to.....G.R.L.D.....No.....3927/A.....

dated.....27th February....195 3 I have the honour to inform you that the Case noted in the margin was heard by the High Court on 16-3-53 when the following Order was passed:—

Criminal Appeal No. 350/-53 (By State)

THE SF... ...'D GO...
PART...
7161
24/3/53
A

State
Vs.
Annappa Laxmanrao Mane

P.T.O.

LEGAL DEPARTMENT
20 MAR 1953

Yours faithfully,

Government Pleader, High Court.

1. Dismissed.

2. The Court observed that the Panch to the 1st Panchnama went hostile; that the two original yadis regarding 2nd dying declaration were not produced. The Court also observed that these were no compelling circumstances within the decision of the Supreme Court.

Having thus observed, the Appeal was dismissed summarily and no Judgment was recorded.

Yours faithfully,

For Government Pleader, High Court.

Subd for information
The result may be recorded by a G R
DHM
24/3

DS.(G) Khan Y. Yaub 24/3

REA 25/3

Secy. HJ 25.3.53

L D 26/3

NO 5673/A
F 25-3-53

43

Criminal Appeals.
In the High Court, Bombay
against acquittal (Bijapur).

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 11414/A
Bombay Castle, 19th May 1953.

~~[illegible]~~

Read Government Resolution, Legal Department No.3927/A, dated the 27th February 1953.

Letter from the Government Pleader, High Court, Bombay No.2561, dated the 19th March 1953, stating that Criminal

In the Court of the Additional Sessions Judge, Bijapur. Sessions Case No.49 of 1952. State Vs. Annappa Laxamrao Mane.) Baburao Annappa Mane.) Basawant Jijoba Mane.) Accused. (Offence under section 302 r/w 34 I.P.C.).	:	Appeal No.350 of 1953, filed by Government against the acquittal of the Accused in the case

noted in the margin, was heard by the High Court, Bombay, on 16th March 1953 when the following order was passed :-

"Dismissed."

RESOLUTION :- The result of the appeal is recorded.

By order and in the name of the Governor of Bombay,

Issued 19/5.

[Original] Akbar Y Sarela 19/5
Akbar S. Sarela.
Deputy Secretary to Government.

To
The Home Department,
The District Magistrate, Bijapur,
The Public Prosecutor, Bijapur,
The Range Deputy Inspector General of Police, Southern Range.

K.18.

Submitted for signature.
19/5
19/5 D. S. [C.L.]

570

Submitted after recess.
File in Cr. A. Bypass/53
KK
20/5

D-S. [Cr. Law]

Exam 20/5

Cr. A Bypass/53
21/5

5 45

No.M.G.P.1067
Bijapur, 12-8-1953.

The Secretary to Government,
Legal Department,Bombay.

LEGAL DEPARTMENT
14 MAR 1953

Subject: Appeal against the order of acquittal passed by the R.M.F.C. Bijapur in C.C. 250/51, on 24-1-1953.
Proposals to prefer the ---

....

Shri Ramanna Mamadpalli of Bijapur who was prosecuted for offences under sections 66(b), 85(1) and 85(2) of the Bombay Prohibition Act, has been acquitted on 24-1-1953 by the R.M.F.C.,Bijapur.

HE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 6660
Dt. 17/3/53
A

The Sub-Police Prosecutor Bijapur who was in charge of this case has recommended for preferring an appeal against the acquittal order under his letter No.1000/13-2-1953. The Public Prosecutor,Bijapur is of opinion that this is a fit case for preferring an appeal.

I agree with the reasons given by the Sub-Police Prosecutor,Bijapur and recommend that Govt. may be moved to file an appeal to the High Court against the order of acquittal.

The Public Prosecutor has already sent a copy of the sub-Police Prosecutor's letter and a copy of his endorsement No.326 dated 24-2-1953 , thereon. He has also sent one certified copy of judgment to you I send herewith two undertified copies of the judgment.

The present exact address of the accused is " Ramanna Timppanna Mamadpalli,BIJAPUR"

O.C.signed
by the D.M.

For District Magistrate,
Bijapur.

Below No. 1000 of 1953 of 18-2-1953 from Police Prosecutor, Bijapur.

No. 326 of 1953.
Date 24-2-1953.

Rorwarded with compliments to the District Magistrate, Bijapur.

For the reasons stated by the learned Police Prosecutor, I am of opinion that this is a fit case for preferring an appeal to the High Court. I therefore request to move the Government to prefer an appeal to the High Court against the acquittal. I will forward to day to the Remembranc of Legal Affairs a copy of the report of the Police Prosecutor together with copy of this endorsement of mine, I have sent ~~on~~ an uncertifed copy of judgment to you herewith. I will forward certified copy of Judgment to the Remembrancer of Legal Affairs.

LEGAL DEPARTMENT
26 FEB 1953

Sd. A.C. Angadi.
blic Prosecutor, Bijapur.

LEGAL DEPARTMENT
File No 4922
26/2/53

No. 327 of 1953.
Date 24-2-1953.

Copy respectfully forwarded to the Remembrancer of Legal Affairs Bombay No.1 along with uncertified copy of judgment.

Public Prosecutor, Bijapur.

No. 1000 of 53.

To

Bijapur, 18th Febr. 1953.

The Public Prosecutor,
Bijapur.

49

Sir,

I beg to submit this proposal for appeal.

In this case, one accused Ramanna Mamadapalli of Bijapur was acquitted under Section 66(b), 85(1) and (2) of the Bombay Prohibition Act by the R.M.F.C.Bijapur on 24-1-1953. In my opinion, the Learned Magistrate has erred in holding that the offence of consumption of liquor is not proved by the Prosecution, in as much,a the prosecution has not proved satisfactorily by tangible evidence, that the accused consumed liquor, within the jurisdiction of City of Bijapur, and hence I submit, that it is a fit case to go in Appea

The facts of the case :-

The case for the prosecution is that the accused was found on a road, on 15-8-1951, at about 11-10 p.m. having drunk liquor and incapable of taking care of himself and behaving in a disorderly manner. Whereupon the case was investigated and charge-sheet was sent against him under section 66 (b), and 85(1) and (2) of the Bombay Prohibition Act.

Reasoning :-

The Court has held that the accused has consumed liquor, but the Court holds that the ~~jurx~~ prosecution has not proved whether the accused consumed liquor within the jurisdiction of the Magistrate. The Prosecution relies for the fact of proving that he has consumed liquor in Bijapur on theevidence of Dr: Umarji, the evidence of witness Narayan Kalal and the presumption under section 103 of the B.P.Act.

Dr. Umarji states that when he was brought to the Hospital, he questioned the accused who admitted voluntearily that he has taken little whisky in a glass of soda-water, in the Chavan's hotel at Bijapur. The Doctor is corroborated by his case paper wherein he has left a note about it. The Learned Magistrate has held this evidence to be inadmissible on the ground that it is hit under section 26 of the Evidence Act. The Prosecution has never used as a piece of confession against the accused, but it has used it as an admission under Section 18 to 21 of Evidence Act that the offence has taken place at Bijapur.

In I.L.R. 1941 Karachi, page 257, Their Lordships have held that incriminating statement not admissible as confession, in evidence, will not necessarily be excluded. They may be admissible in evidence to prove other relevant facts or facts in issue.

Further the Lordships of our own High Court has held in 54 Z B.L.R. Page 325 that for cases of consumption of liquor, the prosecution need only prove that he has consumed liquor and then the burden of proof shifts on the accused to prove that he has consumed non-prohibited liquor. In my opinion, it can be inferred from this judgment that the Prosecution has only to prove the consumption of liquor and then the burden shifts to prove that he has either consumed liquor which is permissible or that he has consumed outside the jurisdiction of the State, where there is no Prohibition Act.

It is also significant to note that the accused has not stated either in the statement or suggestions made to the Prosecution witnesses that he has consumed liquor outside the State of Bombay

Further there is the evidence of one Annappa Kalal, who has seen the accused on the same day at about 6-30 p.m. in Gandhi Chowk, when he has gone there to hear the lecture of Deputy Minister Shri Karmarkar. This witness was cross-examined at length about the lecture and he has stood well.

But the Learned Magistrate has disbelieved him on the ground that Narayan Kalal does not disclose why and how he came to disclose his knowledge about this fact to the complainant, and also that his father was a Toddy Contractor, when Limaye, was an Excise Sub-Inspector, four years back, and that he was coming to his house. The evidence of this witness discloses that the accused was at Bijapur at about 6-30 p.m. on that day. and that it was not possible for him to go out of Bijapur and drink liquor outside the Bombay State as the nearest place which is outside the Bombay State is about 40 miles from this place.

So far as the evidence of incapacity to take care of himself and disorderly behaviour, there is the evidence of the Panchas and the Police Officer and other independent witnesses and they are disbelieved on the only ground that thee is some discrepancy in their statements as to the place where the anchanama was written. The places mentioned by the witnesses are quite close and it is quite likely that one witness may remember it with reference to one house and the another witness remember it the shop nearby.

In the end, I believe that the Learned Magistrate has erred in Law and facts and it is a fit case to go in Appeal.

The copy of the judgment is submitted herewith and if deemed fit, the case may be sent up in appeal by requesting the District Magistrate to move the Legal Remembrancer for the same.

The copy of the judgment accompanies.

SD/- N.F.Elavia.
Sub-Police Prosecutor, Bijapur.

Copy with respects to :-

The D.S.P., Bijapur.
The Senior Police Prosecutor.Bijapur.
The S.D.P.O.N.D.,Bijapur.

5959

Opinion in the case of State Vs. Rammanna Tippana Mamadpalli

.....

In this case the accused was, charged under sections 66(b)(i) and 85(1)(a) and 85(2)(a) of the Bombay Prohibition Act in the Court of the Resident Magistrate, First Class, Bijapur.

2. The prosecution case was that the accused on 15th August 1952 at about 11-10 p.m. was found drunk and incapable of taking care of himself and behaving in a disorderly manner. He was therefore charged as above. The prosecution case was supported by the evidence of Doctor who stated that when he was brought to the hospital, he questioned the accused who admitted voluntarily that he had taken whisky in a glass of soda-water in the Chavan's hotel at Bijapur. This evidence of the Doctor was corroborated by the case apaers wherein he left a note about the above. The learned Magistrate curiously enough excluded on the ground that it was hit under section 26 of the Evidence Act. In addition, there was an evidence of one Annappa Kalal who had seen the accused at 6-30 p.m. in Gandhi Chowk. In addition, Panchas, Police Officer and other witnesses who deposed to the fact that the accused was unable to take care of himself and his behaviour was disorderly.

3. The defence of the accused was that he had not onsumed/

consumed liquor at Bijapur. He also denied of having be
drunk and being incapable of taking care of himself on a public
road or behaving in a disorderly manner there under the
influence of liquor. He contended that he was in the hou
of one Biama Jatgar in the chowk of Desayini of Jainapur
at Byapur and that Limaye came there with the police and
him away in a tonga to Police Station stating that he was
called by the Police-Sub-Inspector. The accused further
contended that the complainant had kept one Yankawwa.

3. The learned Magistrate came to the conclusion
that it was difficult to find on the evidence that the
accused had drunk liquor in Bijapur. He therefore acquit
the accused of the charge under section 66(b). As regard
the charge under section 85(1)(2)(a), the learned
Magistrate concluded that the evidence of witnesses on th
point was also doubtful. He therefore acquitted the
accused giving him the benefit of doubt. The judgment on
both these points seem to be unsatisfactory.

4. I advise an appeal against the order of acqui
in this case.

Bombay:

April 1953. Government Pleader, High Court.

L.D.R.I.No. 6660
Dated 17-3-83

55

Submitted

2. This is a proposal from the Sub-Police Prosecutor Bijapur for an appeal to the High Court against the order of the R.M.F.C. Bijapur dated 24-1-83.

3. The District Magistrate of Bijapur recommends/~~does not recommend~~ an appeal.

4. The Public Prosecutor of Bijapur recommends/~~does not recommend~~ an appeal

5. The Government Pleader, High Court, Bombay ~~advises/does not advise~~ not consulted

6. Administrative period expires on 24-4-83
Limitation period expires on 24-7-83

7. Certified copy of judgment is recd and the ~~correct latest addressas~~ of the parties concerned are/~~are not~~ received.

KML/18/9

17/3

Dr. (G)

RLA

Secy (H)

The accused was prosecuted for offences of being drunk and incapable of taking care of himself at a public place and ~~or~~ behaving in disorderly manner under the influence of drink (Sections 66(b), 85(1)(i) and 85(1)(ii) of the Bombay Prohibition Act, 1949). He has been acquitted by the Resident Magistrate, 1st Class, Bijapur. Against that acquittal the Sub-Police Prosecutor, who conducted the case, has proposed an appeal. The Public Prosecutor and the District Magistrate, Bijapur support that proposal.

The prosecution case was that on 15-8-1951 at about 11-10 P.M. the accused was found by the Complainant Head Constable Limaye to be smelling of liquor and behaving in a disorderly manner under the influence of drink in front of the shop of one Kalyan Sheti. A panchnama of his condition was made and then he was prosecuted for the above mentioned offences.

He denied the prosecution case and stated that he had not committed an offence. He alleged that Constable Limaye had put up a fal: case because he had complained against him.

The Magistrate came to the conclusion that he had consumed liquor, but has acquitted him on the ground that it was not shown that the consumption had taken place within the limits of the State. In respect of offences of disorderly behaviour and being drunk and incapable of taking care of himself, the Magistrate has acquitted him on the ground that those offences were not proved.

Now in respect of the offence of consumpti the only question is whether the Magistrate

was right in giving the accused the benefit of doubt on the question whether the consumption took place within the limits of the Bombay State. It appears that the border of the State is only 40 miles from Bijapur where the accused was found drunk. That is not a great distance to cover. The prosecution appears to have realised it and therefore sought to lead evidence to show that consumption had taken place in Bijapur itself. One witness examined was Dr. Umarji, who had medically examined the patient. He stated that at the time of his examination the accused confessed to him that he had consumed liquor in the hotel of one Chavan at Bijapur. This confession does not appear probable but that apart and adequate. it was made when the accused was in Police custody and the Police Officer was near. I think the Magistrate was right in rejecting the confession. The other witness examined was one Narayan Kalal, who stated that he had seen the accused at Gandhi Chowk in a sober condition at about 6-30 P.M. The Magistrate has disbelieved Narayan Kalal and I think rightly so. It seems that Head Constable Limaye and Narayan Kalal are on friendly terms. It is admitted that Limaye used to go to the house of Narayan Kalal when Narayan's father was a toddy contractor. It also appears that on 16-8-1951, i.e. the next day after this alleged offence, Narayan had gone to the police station as his name was taken down by a policeman on the preceding night for riding a cycle without a light. Although he went there on 16-8-1951, he does not appear to have been examined in respect of this particular offence of the accused. His statement was recorded two days later i.e. on 18-8-1951. The significance of this circumstance lies in the fact that the proceedings against Narayan Kalal in respect of riding a cycle without a light

were dropped altogether. It is apparent, therefore, that he was bought over. If, therefore, the evidence of these two witnesses goes there was nothing on the positive side to show that the accused had taken liquor within the limits of the Bombay State. As the limits extend only 40 miles from the town, the Magistrate was not wrong in giving to the accused the benefit of doubt.

On the count of disorderly behaviour the evidence is not convincing. The two panch witnesses Nagesh and Bhosale, who were examined on the point, have not made any clear case. According to the prosecution the only fact from which disorderly behaviour is to be inferred is that the accused said, "What can anybody do to me". Now this by itself could not amount to disorderly behaviour and as for the evidence, Nagesh says that what the accused said was not audible and Bhosale says that he could not understand what the accused was saying because he does not know Kanarese. The only other witness was one Laxman, who was present at the time. But he does not say anything about the disorderly behaviour. Therefore, the acquittal on the count of disorderly behaviour appears to be correct.

The only count left is that of being drunk and incapable of taking care of himself. The panchnama of his condition was made at 11-30 P.M. He was put up before the Medical Officer at 12-20 A.M. The Medical Officer has deposed that the accused talked relevantly, that his gait was steady, his pupils were normal and his dress was clean. This evidence ran against the prosecution

theory of disorderly behaviour and therefore the prosecution put forward the explanation that the effects of drink must have disappeared from the time the panchnama was complete to the time he was placed before the Medical Officer. Such an explanation is too ~~akin~~ thin to ~~solve~~ hold. At any rate, if the ~~prosecution~~ police took so much time, although it appears that the Civil Hospital is a distance of only 15 minutes from the scene of offence, the prosecution itself must be held to blame and if the Magistrate feels doubtful about the prosecution case, it cannot be said that the doubt was unreasonable.

On the whole therefore I do not consider this a fit case for an appeal.

Sd/- P. Laub
D/ 20·3·53

R.2 ✝ WE may consult GP with special reference to the confession made to Dr Umaji — and also the burden of proof. These two points may be further examined in LD

do

20/3

Subd:- ✝
GP's opinion is red. He advises an appeal.

DDa
14/4

DS (G)

RCA

Secy (H).

GP advises an appeal because in his opinion the judgment is unsatisfactory. He does not say why it is unsatisfactory. He was requested specifically to consider the burden of proof and the question of confession. He has ~~considered about the former~~ not offered any observations about from A of his opinion it appears that he is of the opinion that the confession should not have been

concluded

In my opinion the confession is hit by Section 26 of the Evidence Act and as for the burden of proof about the place where consumption took place there is no absolute standard. It all depends upon the distance from the nearest border. The Bombay H Court has held that a long distance will give rise to a presumption that consumption was within the Bombay State. Here the distance was 40 miles. It is not sufficient to give rise to a presumption

Sd/- S. Y. Kamb
J. 14/4/53

R.2A The accused did not take the defence that he had taken drink outside the State. The border is 40 miles away and there is no evidence to show that he had gone there. The Magistrate was right the confession was inadmissible - not free from doubt. In these circumstances we may accept the GP's advice (though it is given in general terms) and dismiss the appeal R.

14/4

14/4

8/17/4/53

90/9/A.
16.4.53.

F73 63

Criminal Appeals,
In the High Court, Bombay
against acquittal (Bijapur)

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No. 9644/A
Bombay Castle, 24 -4 — 1953.

Letter from the District Magistrate, Bijapur No.M.C.P.

In the Court of the Resident Magistrate First Class, Bijapur.	1067,
Criminal Case No.250 of 1951.	dated the
The State of Bombay vs. Ramanna Mamadpalli ... Accused.	12th March 1953
(Offence under sections 66(b), 85(1) and 85(2) Bombay Prohibition Act)	requesting

that an appeal under section 417 of the Code of Criminal Procedure, 1898, may be made to the High Court, Bombay against the order of acquittal passed by the Resident Magistrate, First Class, Bijapur on 24th January 1953 in respect of the accused in the case referred to in the margin.

RESOLUTION: The Government Pleader, High Court, Bombay is directed to file an appeal in the High Court, Bombay under section 417 of the Code of Criminal Procedure, 1898, against the order of acquittal passed by the Resident Magistrate, First Class, Bijapur on 24th January 1953 in respect of the accused in the case referred to in the margin.

By order and in the name of the Governor of Bombay,

Akbar S. Sarela,
Deputy Secretary to Government.

To
The Home Department,
The District Magistrate, Bijapur,
The Government Pleader, High Court, Bombay (with the papers of the case),
The Public Prosecutor, Bijapur,
The Deputy Inspector General of Police, Southern Range, Belgaum.

KUP.
22/4.

Ibid after issue
Await result

27/4

DS. CG 29/4

G.C.P.—(J) J 157—12,000—9-53
G.O., L.D., No. 1193 dated 7-12-15

[Govt. PI. H.C. Bom.—Spl. Form No. 2 e

No. 4669

From :-

THE GOVERNMENT PLEADER HIGH COURT, BOMBAY;

THE SECRETARY TO GOVERNMENT, LEGAL DEPARTMENT, BOMBAY:

To ~~THE PUBLIC PROSECUTOR, BOMBAY~~

~~THE DISTRICT MAGISTRATE OF~~
~~THE COLLECTOR OF~~

Legal Department,
Secretariat, Bombay
26 JUN 1953

Bombay...25th June.....*195* 3

SIR,

Xp-23 Referring to.....G.R.L.L.....No...9646/A.....
dated...24th April.....1953 , I have the honour to inform you that the Case noted in the margin was heard by the High Court on 22-6-53 when the following Order was passed :—

Criminal Appeal No.808/53(By Govt.)
State
-VS-
Ramanna Namadpalli

P.T.O.

~~Yours faithfully,~~

~~Government Pleader, High Court.~~

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 15576
Sub No.
A. 27.6.53

"Dismissed."

1) The Court observed that the case was not worth interferring in view of the Supreme Court - Judgment.

2) Having thus observed the Court dismissed the Appeal summarily. No judgment has been - - recorded by the Court in the matter.

Yours faithfully,

For Government Pleader, High Court.

L.D

Submitted for information

Regarding the case may be moved by a GR.

27/6

D.S(C.C)

I had advised general appeal but GP considered it a Leave to appeal

Asst. Secy. 27/6

Addl. Secy 27/6

Criminal Appeals.
In the High Court, Bombay --
against acquittal (Bijapur).

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 14269/A
Bombay Castle, 3rd. July 1953.

Read Government Resolution, Legal Department, No. 9646/A, dated the 24th April 1953.

Letter from the Government Pleader, High Court, Bombay,

In the Court of the Resident Magistrate First Class, Bijapur.	No. 4669, dated
Criminal Case No. 250 of 1951	the 25th June
The State of Bombay vs. Ramanna Mamadpalli... Accused.	1953 stating that Criminal
(Offence under sections 66(b), 85(1) and 85(2) Bombay Prohibition Act)..	Appeal No. 808 of 1953,

filed by Government against the acquittal of the accused in the case noted in the margin, was heard by the High Court, Bombay, on 22nd June 1953 when the following order was passed :-

"Dismissed".

RESOLUTION: The result of the appeal is recorded.

By order and in the name of the Governor of Bombay,

AKBAR S. SARELA,
Deputy Secretary to Government.

To
The Home Department,
The District Magistrate, Bijapur,
The Public Prosecutor, Bijapur,
The Range Deputy Inspector General of Police, Southern Range, Belgaum.

HSP/2/7 Submitted for signature
D.S. (G.L.)

18

Submitted other issue

File in C&A: B24/53

KK

D.S. (C&L)

C&A B24/53

17

269 79

D O C K E T S H E E T.

F.D. Reference.

Subject:- Criminal Appeals (Bijapur)

File No. 27854

Legal DEPT.

A BRANCH.

Sessions Case No. 71 of 1952

Tanimanaik @ S. V. Sawanur

Venkatesh @ V. R. Torvi

Reference :-

23-2-1953

limitation expired 23-8-1953

Date	To whom sent	Notes and instructions.
6-10-53		Did we receive any proposal for an appeal from Ld. A Bijapur? It appears from the pages 145-49 that the complt moved the A-G by letter dated 27-7-53 & more than 4 mts. to go in appeal. Devan. Y. Yarab 8-10-53
		Subd. No proposal has been recd in resp of this case. It is pointed out that the complainant approached the D.M & the F.D. by his applns. dt 27-7-53 & 3-8-53 i.e. after letting more than 5 months lapse of the limitation period to lapse. Obs the Registrar & Compares 7/x
		DS.(G) A DS The F.D [illegible] informed that the period of limitation for filing an appeal against acquittal having expired on 23-8-53, no such appeal can now be entertained. Devan Y. Yarab 7.10.53

8/71

Legal Department.

The Finance Department is informed that the period of limitation for filing an appeal against acquittal having expired on 23rd August 1953, no such appeal will now be entertained.

O/c

Additional Secretary to Government.

U.R. to F.D. No. 20528 /A, dated the 10th October 1953.

Subd for ngn.
10/10

Dd. (G) 10/10

Addl Secy.

Secy 10/10

Submitted after issue

File in Cr A Bx 1/53

JKK
12.10

DS-(C.L.)

Circm 12/10

Cr. A. Bx 1/53

13-10

Correspondence.

DOCKET SHEET.

Criminal Applications

Subject :- (Bijapur)

Criminal Case no. 529 of 1953

State

V/s

Tippanna Kurmanna Matgar

File No. 27210

Legal Dept.

Branch

References :-

S. 66(b) r/w S. 13(b) Bombay Prohibition Act.

12-10-53

1-4-56

Date	To whom sent	Notes and instructions.
14.11.53		The accused who is dismissed as a kamgar of Bagalkot was found smelling of liquor. He was prosecuted & has been convicted of the offence of consumption liquor (S. 66(b) of the Act). The Magistrate sentenced him to a fine of Rs. 25/-. The grounds of lenient punishment are - 1 There is no previous conviction 2 The deed is a young man of 25 years 3 He deserves to be given an opportunity to improve his character. The P.P.O.-D.M Bijapur recommend

No. M.G.P. 2006.
Bijapur 10-11-1953.

25
75

From:-

Shri H.T.Sadhwani. I.A.S.,
District Magistrate,Bijapur.

To,

The Secretary to Government,
Legal Department,Bombay.
BOMBAY

Subject:- Revision application.
Enhancement of sentence in criminal case No.529/53 of the court of the 2nd ~~Resident~~ Judicial Magistrate Bagalkot.

Sir,

The 2nd Judicial Magistrate First Class Bagalkot has convicted the accused Tippanna Kurmanna Metagar of Bagalkot under section 66(b) of the Bombay Prohibition Act 1949 and sentenced him to pay a fine of Rs. 25/- and in default of payment of fine to suffer Rigorous -- imprisonment for 15 days. The learned Magistrate while inflicting this lenient punishment has observed as below.

> " The accused is a young man of 25 years. No previous convictions are proved against him. I, therefore give him a lenient punishment with a view to afford an opportunity to improve his character. "

The proviso to sub-section(i) of section 66 of the Bombay Prohibition Act provides that in the absence of special and adequate reasons to the contrary to be -- mentioned in the judgment the punishment for the first offence shall not be less than three months and a fine shall not be less than Rs. 500/-.In view of this the reasons stated by the learned Magistrate for awarding less than the minimum punishment on the accused in question are not adequate. I would therefore request you to move Government to file a revision application in the High Court for the purpose of enhancement of sentence.

The Public Prosecutor Bijapur is of the opinion that it is a fit case to move Government for filing a revision application in the High Court for enhancement of sentence.

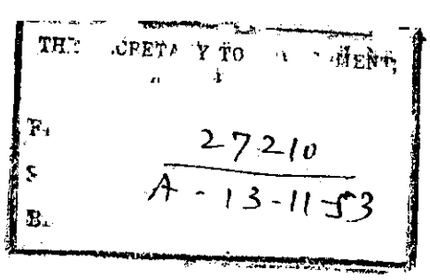
Since the case in question has been tried summarily judgment is the only record (section 264(2)Cr.P.C.). One certified and two uncertified copies of the -- judgment are enclosed herewith.

The address of the accused is the same as in the judgment.

Yours faithfully,

o.c.signed by
the Dist.Magte,

For District Magistrate,Bijapur.



a similar application for enlargement of sentence. I am unable to recommend the proposed. The reasons cannot be said to be wholly inadequate. It cannot be said that discretion was not properly exercised. There is little likelihood of the High Court interfering in a matter of this nature & justifying enhancing the fine when the accused is a mere tenant

Yakub

R.L.A agree that the H.C. not likely to entertain the application for revision

16/11

Secretary 16/11/53

L.D 16/11

R.22978/A.
16.XI.53.

17/11

No. 25606/A.

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, (Bombay No.1). 19. XI. 1953.

To

The District Magistrate, Bijapur.

Subject: Revision Application for enhancement of sentence in Criminal ~~Sessions~~ Case No. 529 of 1953
~~592~~ of 1953

Sir,

With reference to your letter No. M.G.P. 2006 dated the 10th November, 1953, on the ~~x~~ subject noted above, I have the honour to inform you that Government does not consider this a fit case for filing a revision application to the High Court, Bombay.

2. Papers of the case accompany.

Yours faithfully,

o/c for Remembrancer of Legal Affairs.

Submitted for signatures
JKK 18/11

Copy to :
The Public Prosecutor, Bijapur
The Range Deputy Inspector General of Police, S.R., Belgaum

Issued 19/11
P.S.(A.L.)
19/11

Issued JKK 19/11

Submitted after issue

File in C&A Bishopric

XK
24/4

D.S. (C.L.) 24/4

C&A-Bishopric
XK
26/11/53

L.D.R.I. No. 25-404
dated 23 - October - 53

Submitted.

2. This is a proposal from the Public Prosecutor, Bijapur for an appeal and a revision applin to the H.C against the order of the Sessions Judge Bijapur dated 28- Sept - 1953

3. The District Magistrate of Bijapur recommends/~~does not recommend~~ an appeal and revision application

4. The Public Prosecutor of Bijapur recommends/~~does not recommend~~ an appeal and revision application

5. The Government Pleader, High Court, Bombay advises/does not advise not consulted.

6. Administrative period expires on 28-12-53.

Limitation period expires on 28-3-54

7. Certified copy of judgment is need and the correct latest addresses of the parties concerned are/are not received.

HW
27/x

DS (G)

HSP/2/7 RA

Secy to D

D.S.(Criminal Law).

The 9 accused in this case were charged with being the members of ancunlawful assembly (Section 147 I.P.C.), rioting (sec. 148 I.P.C.), causing death in the prosecution of the common object of the unlawful assembly (section 304 read with section 149 I.P.C.), Criminal trespass (section 447), doing rash and negligent act ~~and~~ endangering human life (sec. 337 I.P.C.) and arson (section 436). They were tried before the Additional Sessions Judge,Bijapur, with the aid of 4 Assessors. All the assessors were of the opinion that the accused were not guilty, but the learned Additional Sessions Judge was of the opinion that out of the 9 accused 6 were guilty namely accused Nos. 1,2,3,4, 6 and 7; and the remaining three namely accused Nos. 5, 8 and 9 were not guilty. Accordingly he has acquitted these three (accused Nos.5,8, and 9) ~~three accused~~ and convicted the other 6 accused for various offences. The Public Prosecutor and the District Magistrate,Bijapur, recommend a revision application and acquittal appeal.

2. The broad facts are these. The persons who were murdered were two brothers - Kantappa and Gursiddappa. In August 1951, one Appasaheb, the brother of Accused No.2 was murdered by being cut up with a sword in survey Nos. 3 and 11/3 of village Shinganapur. In respect of that murder 8 persons were prosecuted and amongst those 8 were Kantappa and four of his brothers. That case ended in an acquittal in February 1952. The acquittal left a soreness amongst the relatives of the deceased Appasaheb. Accused No.2 who is the brother of Appasaheb appears to have taken upon himself to avenge that murder. Kantappa felt that his life was in danger and,therefore, he left the village. But he used to come occasionally to the village to see his mother and other relatives.

The last time Kantappa came to the village was on the 10th of January 1953. He stayed with his mother for 3 days and left to go back on 13th of January. When he left he had with him several companions. On the way he received information that accused No.2 andh a few others were waiting for him fully armed to do him to death. He, therefore, turned his ~~horse~~ coutse and went into Survey No.121 owned by one Baslingappa. Baslingappa was there and there they all sat down and began to eat Hurda. In the meanwhile, accused No.2 got information that Kantappa had gone into Survey No.121. He,therefore came to Survey No.121 and with him were accused Nos. 3,4, and 7. Accused Nos. 3 and 4 are the servants of the uncle of accused No.2, and accused No.7 is a relative of accused No.2. When they came to survey No.121, accused No.2 had a gun, in his hand, and the other three persons had axes and other weapons. Accused No.2 fired his gun but missed his target. He only happened to injure one of the companions of Kantappa. Kantappa,therefore, began to run away. At this stage, one of the companions of Kantappa proceeded to the Police Station at Chadchan to inform the police so that they may come in time to prevent blood-shed. That companion was Mahadeoppa. In the information which he gave at the police-station at about 1 p.m., the persons mentioned are accused Nos. 2,3,4,and 7. Meanwhile, in the village, Kantappa was followed by the four accused namely accused Nos. 2, 3,4 and 7. It appears that they found that Kantappa and his companions were more in number than themselves and therefore, they took some more persons to assist them. It is a matter of dispute who those extra persons were. According to the prosecution, the other persons who were asked to come to assist them and did assist them were accused Nos. 1, 5, ~~and~~ 6, 8 and 9.The learned Judge has held that only accused Nos.1 and 6 came to the assistance of accused Nos.2 and his party, but that accused Nos. 5,8 and 9 though

they might be present were not the members of the unlawful assembly. To proceed further with the narration of events, however, in the pursuit of Kantappa, the assailants came up against Kantappa's brother Gursidappa who tried to obstruct them, and for that, he received a gun shot and ~~xhex~~ fell. The pursuit continued and eventually Kantappa was cornered in Survey No.11/3 -- the very land in which Appasaheb had been murdered in August 1951. Kantappa could not have been shot to death because accused Nos. 2 and 6 had guns (Accused No.6 is a retired Excise Constable); but instead what the assailants did was to cut him into pieces. The reason probably was that Appasaheb had also been cut into pieces in that very land, and the additional reason may be that there was a standing jowar crop in Survey No.11/3 at the time and therefore shooting may not have been so effective. After murdering Kantappa and Gursidappa their bodies were taken into a hut in the field and the hut was set on fire by the assailants. By this time, another of Kantappa's companions had proceeded towards the Police station. This other companion was Shivrudrappa. He filed a complaint in the Police station in which the names of all these 9 accused were mentioned as the members of the unlawful assembly. Investigation started and eventually all these 9 accused were put up for trial for the various offences above mentioned.

3. The learned Judge has held that accused Nos. 1, 2, 3, 4, 6 and 7 were members of the unlawful assembly whose object was to murder Kantappa, that they murdered Kantappa in the prosecution of their common object; that they also murdered Gursiddappa the said murder being an offence which they knew was likely to be committed in the prosecution of their common object; and that they eventually put ~~both~~ the bodies both of Kantappa and Gursiddappa into a hut in the field and set it on fire to burn the bodies.

He convicted the above six accused for the various offences, but so far as the sentences are concerned he has given sentence only in respect of the offence under section 302 read with section 149 I.P.C. With regard to the other offences he has not passed separate sentences on the ground that the other sentence would, in any case, be made to run concurrently. The sentence given by him for the offence under section 302 read with section 149 I.P.C. is transportation for life.

4. The first proposal of the Public Prosecutor is that the State should go in revision for the enhancement of the sentence inflicted under section 302 read with section 149 I.P.C. He urges that in respect of murder the normal sentence is the death sentence and it should have been given. The reasons given by the learned Judge for not inflicting the extreme penalty are these:-

> " 88. As regards the sentence for the offence under section 302 read with section 149 I.P.C. there are circumstances in the case which refrain me from passing the extreme sentence of death, when so many accused surrounded Kanteppa one cannot be quite sure as to who exactly delivered the fatal blow, which put an end to his life. As regards Gurshiddappa, his murder was not premediated and I think more than one person should also have been responsible for causing his death and one cannot be sure as to who dealt the fatal blow. Accused No.2 felt that his brother Appasaheb had been murdered by Kanteppa and it is now even admitted in the prosecution evidence that Appasaheb was so murdered. That appears to have upset to some extent the balance of mind of accused No.2 and a suggestion is made during the course of the arguments that accused No.2 was always carrying the gun with him as he stood in constant fear of Kanteppa. I think therefore that having regard to all the circumstances in the case the proper sentence to pass in this case would be one of transportation for life."

Now the principles of law on which the High Court will consider an application for enhancement of sentence of transportation for life, to one of death, are well settled. It is not enough that the case should ~~be such as~~ such that a death sentence would be a proper sentence to pass, nor is it enough that the High Court if it had tried the case

would have passed the death sentence. What is necessary is that the death sentence should , on the circumstances of the case, be the only possible sentence that could be inflicted. These principles have been enunciated by the Bombay High Court in several decisions and have been recently affirmed by the Supreme Court in Dalip Singh v. The State of Punjab (1953 S.C.R.532) wherein their Lordships observed as follows:

> " In a case of murder, the death sentence should ordinarily be imposed unless the trying Judge for reasons which should normally be recorded considers it proper to award the lesser penalty. But the discretion is his and if he gives reasons on which a judicial mind could properly found an appellate Court should not interfere. The power to enhance a sentence from transportation to death should very rarely be exercised and only for the strongest possible reasons. It is not enough for an appellate Court to say, or think, that if left to itself it would have awarded the greater penalty because the discretion does not belong to the appellate Court but to the trial Judge and the only ground on which an appellate Court can interfere is that the discretion has been improperly exercised, as for example where no reasons are given and none can be inferred from the circumstances of the case, or where the facts are so gross that no normal judicial mind would have awarded the lesser penalty. (page 538 ibid)

That was also a case of unlawful assembly where the accused were held guilty of murder by virtue of the constructive liability under section 149 I.P.C. Their Lordships proceeded to observe as follows:-

> " ...In cases where the facts are more fully known and it is possible to determine who inflicted blows which were fatal and who took a lesser part, it is a sound exercise of judicial discretion to discriminate in the matter of punishment. It is an equally sound exercise of judicial discretion to refrain from sentencing all to death when it is evident that some would not have been if the facts had been more fully known and it had been possible to determine, for example, who hit on the head or who only on a thumb or an ankle; and when there are no means of determining who dealt the fatal blow, a judicial mind can legitimately decide to award the lesser penalty in all the cases. We make it plain that a judge is not bound to do so, for he has as much right to exercise his discretion one way as the other. It is impossible to lay down a hard and fast rule for each case must depend on its own facts. But if a Judge does do so for reasons such as those indicated above, then it is impossible to hold that there has not been a proper exercise of judicial discretion. (page 539 ibid).

It will be noticed that the reasons given by the learned Judge are covered by these observations and it is,

therefore, not likely that the High Court will enhance the sentence of transportation to one of death.

5. The second proposal of the Public Prosecutor is that as the learned Judge has not passed separate sentences for the various offences that have been held proved and for which accused Nos. 1, 2,3, 4, 6 and 7 have been convicted, a revision application should be filed requesting the High Court to pass separate sentences. No doubt, the Judge should have passed separate sentences. But the question is whether a revision application on that ground alone is worthwhile. The maximum sentence that could be passed foreany of the other offences has been passed in respect of the offence under section 302 read with section 149 I.P.C. Therefore, even if separate sentences had been passed in respect of the several other offences they would have been ordered to run concurrently. I do not think, therefore, that any useful purpose will be served by filing a revision application on that count.

6. The third proposal of the Public Prosecutor is and that is in respect of the burning of the hut, that the learned Judge has not convicted the above accused for an offence under section 436 but has convicted them for an offence under section 426 only, and that he wants the State to go in appeal in respect of the acquittal under section 436,against these accused. The reasons given by the Judge are these:-

> "82.As regards the offence under section 436 I.P.C. no doubt the hut in Survey No.11/3 has been burnt. The dead bodies of Kanteppa and Gurshiddappa were found in the ashes of this hut. It appears to me that the idea was to burn the dead bodies so that evidence of crime may disappear. It is true that it is unlikely that that was the object of the unlawful assembly in the beginning.But they must have thought of this when Shivrudra and others ran away. It appears that it was then that the common object was entertained by the unlawful assembly to burn the dead bodies in the hut to make the evidence of murder disappear. But I doubt whether the use of the hut was such as to bring it within the purview of section 436 I.P.C. Shivrudra has stated that the hut was sometimes used for tethering cattle, and that some such things as ropes werebeing kept there. I doubt whether it was ordinarily used for custody of property. There is no evidence about the value of the hut. I would,

therefore, hold that the offence falls under section 426 and accused Nos. 1,2,3,4,6 and 7 are guilty under that section read with section 149, I.P.C.".

I think these reasons are good reasons and, at any rate, justice having been substantially done, the mere fact that the conviction is under section 426 and not under section 436 is enough to justify an appeal.

7. The last proposal of the Public Prosecutor is that an acquittal appeal be filed against the acquittal of accused Nos. 5, 8, and 9. I am unable to agree with that proposal. First of all, all these persons were admittedly not present in Survey No.121,and secondly, no overt act is ascribed to any of them, whereas as regards the other accused some overt act has been ascribed to every one of them,All these three accused namely Accused Nos. 5, 8 and 9 are not closely connected with accused No.2. They are only stated to be friends of accused No.6 who is stated to be the underling of Accused No.2.

8. After the incident, all those accused who have been convicted had absconded, but accused Nos. 5, 8 and 9 had not absconded. The learned Judge has given in paragraph 76 of his judgment the reasons why he entertains a doubt on the question whether these accused (Nos. 5, 8 and 9) were the members of the unlawful assembly. I do not think the doubt entertained by him is unreasonable, and I would not, therefore, recommend an appeal in this case against the acquittal of these accused.

Sd/- Y. Lakshmaiah
26.11.53

R.H. I am in general agreement but G.P. may be consulted
26/11

G.P.H.C's opinion is read. He neither advises appeal against the order of acquittal in respect of acc. nos. 5, 8 and 9 nor revision application for enhancement of sentences of acc. nos. 2, 4 and 6. p. 25-31/c

KKK 13/1 Supdt. 13/1

D.S. (Co.L.) The opinion of the G.P.H.C is the same as that of my predecessor. This concurrent opinion may be accepted.

13/1

R.L.A. I agree. The observations of the Supreme Court will be acted against any plea to enhance the Sentence. The Mercy petitions are also likely to be entertained.

14/1

* See D 8/15.7.54

16/1

No.M.G.B. 2004.
Bijapur, 20 -10-1953.

From

Shri H.T. Sadhwani, I.A.S.,
District Magistrate, BIJAPUR.

To

Registered Post

The Secretary to Government,
Legal Department, BOMBAY.

L.D.
23 OCT 1953

Sub : Proposal for appeal against acquittal and enhancement of sentences in --- respect of Sessions Case No.37/53.

....

25404
A-29-10-53

Sir,

I enclose a copy of the letter No. 1296 dated October 1953 from the Public Prosecutor, Bijapur and have to state that I agree with the Public Prosecutor and request you to move Government :

A-270

1) To move the High Court for passing separate sentences for the offences for which the accused have been held guilty.

2) To move High Court for enhancement of -- sentences in respect of accused Nos. 2, 4 and 6 as the sentence in case of these accused ought to be death sentence; and

3) To prefer an appeal against the acquittal of the accused Nos. 5,8, and 9 in respect of offences -- punishable under section 147, 447 and 337 read with -- section 149 I.P.C. and in respect of acquittal of all the accused under section 436 I.P.C.

The Public Prosecutor in his endorsement No. 1353 dated 13-10-1953 (copy enclosed) states that -- copies of other papers do not appear to be necessary. However the copies of the papers viz., Exhibits, 6, 21, 24, 32, 33, 38, 43, 44, 45, 46, 53, 56, 60, 61, 63, 65, 70, 71, 74, 75, 78, 79, 80, 82, 84, 86, 88, 89, 91, 93, and 95 which he had taken during the trial are sent -- herewith. He requests to ignore the markings made by him in pen or pencil and writings and notes in them.

One uncertified copy of the Judgment of the Sessions case in question is also enclosed. Another copy of the same has already been sent to the R.L.A. Bombay direct by the Public Prosecutor. As regards the certified copy of the Judgment I have to state that the Public Prosecutor has applied for it on 29-9-1953 and it is not yet delivered so far. I have asked the -- Public Prosecutor to send it direct to Govt. immediately it is received. The address of the accd. is the same as in the Judgment.

Yours faithfully,

C.C.sig[redacted] by D.M.

For District Magistrate,
Bijapur.

No. 1296 of 1953.
Office of the Public Prosecutor,
Bijapur: October 1953.

To

The District Magistrate,Bijapur.

Subject:- Proposal for(1) moving for enhancement o sentence in respect of accused Nos. 2, 4 and 6, (2) for moving for seperate sentences to the convicted accused about some offences and (3) for moving Govern--ment to prefer an appeal against the acquittal of accused Nos. 5,8 and 9 in respect of offences punishable under Secs.147,447, and 337 read with Sec.149 & acquittal of all the accused under Sec.436 of the Indian Penal Code.

Sir,

In enclosing herewith a copy of the Judgment in the above case, I have the honour to state that nine accused were tried by the Additional Sessions Judge,Bijapu in Sessions Case No. 37 of 1953 on a charge of offences punishable under Secs. 148,147,447 and 337, 302 and 436 read with Section 149 of the Penal Code. Accused No.6 was further charged under Sec. 19(f) of the Arms Act.

(2) The Additional Sessions Judge,Bijapur, convicted accused Nos. 1,2,3,4,6 and 7 under Sections 447,337,302 an 426 read with Sec. 149,I.P.Code. He convicted accused No.6 under Sec. 148 of the Indian Penal Code and Sec.19(f) of the Arms Act. He convicted Accused Nos. 1,2,3,4 and 7 under s.147 of the Indian Penal Code.

He sentenced accused Nos. 1,2,3,4,6 and 7 to transportion for life under Sec. 302 read with Section149 He did not pass seperate sentences on them in respect of other offences of which he convicted them. He did not convict the accused under Sec. 436, but convicted them under Sec.426. He acquitted accused Nos. 5,8 and 9

(3) Normal sentence in respect of murder is, sentence of death and sentence in respect of accused Nos. 2 and 4 ought to be death sentence.

If we look to the motive for the commission of the crime, it is apparent that accused No.2 bore a grudg

against Kanteppa since the time of the murder of his brother Appasaheb. Further the evidence will point out that on the day of the offence accused No.2 accompanied by accused Nos. 3 and 4 went armed with his gun presumably to waylay and to murder Kanteppa. He was unsuccessful in his attempt to murder him in S.No.121. It is evident, therefore, that he thereafter collected some more men and accused No.2 along with 9 others became members of unlawful assembly with the common object of committing the murder of Kanteppa and, in fact, murdered him in prosecution of their common object. The murder of Kanteppa was the result of premeditation by accused No.2. Kanteppa's head was severed. The portion of the head was carried by some and the rest of the body was dragged by others and both were taken in front of hut in S.No.1166/3. It was a brutal murder and accused No.2 was mainly responsible for the murder of Kanteppa.

Gurashiddappa went ahead when the assailant came towards him and others. He was requesting the assailants to refrain from committing the wrongs. He was shot at by accused No.6 with the result that he dropped down to the ground. After Kanteppa was murdered as said above and after the assailants brought the head and the rest of the body of Kanteppa near the hut; the assailants brought Gurshiddappa near that hut and finding him to be still alive, he was given blows with axe and was done to death. The act of giving blows was done by accused No.4 (vide Exhs. 78,79 and 80).

After Kanteppa and Gurshiddappa were done to death, their bodies were thrown in the hut and the hut was set fire to

In view of these circumstances, it is apparent that accused Nos. 2,4 and 6 have taken major part and in the case of these three persons there appears to be no extenuating circumstances and, therefore, it is advisible to move the High Court for enhancement of sentence in the case of these three accused.

(4) It would be clear by reference to the findings of the Court that the Court has held accused No.6 to be guilty under Sec. 148 ~~and~~ accused Nos. 1,2,3,4 and 7 to be guilty under Section 147. these 6 accused to be guilty under Sections 337,426 read with Sec.149, all these 6 accused to be guilty under Sec. ~~447~~, and accused No.6 to be guilty under Sec. 19(f) of the Arms Act. It is, therefore, necessary to move the High Court for passing seperate sentences in respect of these offences as well.

(5) The charge against the accused was under Sec. 436 of the Indian Penal Code. The evidence of Shivrudrappa (Exh.60) (Para 1) shows that the hut which was set fire to was of hay, that Ramangouda was tethering his cattle some times there. Shivrudrappa has stated that Ramangouda was also keeping some such things as ropes there. In view of this evidence which is not at all challenged by the defence, the learned Judge ought to have held that the offence committed by the accused was one punishable under Sec.436, and not merely one punishable under Sec.426 of the Indian Penal Code. It may, therefore, be seen that acquittal of the accused in respect of the offence punishable under Sec.436 of the Indian Penal Code is erroneous

(6) Accused Nos. 5,8 and 9 have been acquitted by the learned Judge for the reasons stated in Para 76 of the Judgment. The evidence of Exhs. 60,63,78 and that of Exh. 86 would clearly establish that these accused went along with the other accused, that they went in their company and ~~dis~~trespassed into S.No.11/3 when all along firing by accused 6 was with the gun in his hands was going on. The learned Judge, therefore, ought to have held them to be guilty at least under Section 147, 447 and 337 read with Sec. 149 of the Indian Penal Code. Their names appear in the first

information, Exh.61.

In view of what is stated above, I request you to move the Government to move the High Court for enhancement of sentence in respect of accused Nos. 3,4 and 6 and for awarding seperate sentences in respect of the accused who have been convicted in respect of other offences and for prefering an appeal against acquittal of the six accused in respect of offence under S.43 read with S. 149 against the acquittal of accused Nos. 5,8 and 9 in respect of offences punishable under Section 147,447 and 337 read with Sec. 149 of the Indian Penal Code.

I will forward a copy of this report to the Remembrancer of Legal Affairs,Bombau, along with ~~the~~ an certified copy of the Judgment, as soon as ~~I~~ I get the certified copy of the Judgment. (Please vide ~~Para~~ Govt circular Legal Department No 1710 of 14-2-1949) I have applied for certified copy of judgment on 29-9-1953 and I will forward it to Remembrancer of Legal Affairs

The address of the accused is the same as in the judgment.

Yours faithfully,

sd. A.C.Angadi.
Public Prosecutor,Bijapur.

Accompaniments:

(1) Two copies of Judgment.
~~(2) Two copies of Exhs.60,61,63,78 and 86.~~

27859
A-6-X-53

No. 1297 of 1953.
3-10-1953.

Copy with an uncertified copy of Judgment forwarded with respects to the Remembrancer of Legal Affairs,Bombay.

(2) Certified copy of the Judgment was applied for by me on 29-9-1953. I may get it within about a week or so. I will forward it to you as soon as I get it.

A.Angadi

Public Prosecutor,Bijapur.

Registered Post

No. 1393 of 1953.
20-10-1953.

99
4/9

To

The Remembrancer of Legal Affairs, Bombay.

Subject:- Proposal for a Revision Application for enhancement of sentence in respect of accused Nos. 2,4 and 6 etc. and for(2) making an appeal against the acquittal of accused Nos. 5,8 and 9 in Bijapur Sessions Case No. 37 of 1953.

Sir,

In continuation of my endorsement No. 1297 forwarding to you copy of my report No. 1296 addressed to the District Magistrate of Bijapur, I have the honour to forward herewith the certified copy of the Judgment and of the opinion of the assessors in Sessions Case No. 37 of 1953.

25559.
A - 26-X-53

Yours faithfully,

A Murad

Public Prosecutor, Bijapur.

19/0 99

Copy of letter No. 1296 dated October 1953 from Public Prosecutor, Bijapur to the District --- Magistrate, Bijapur.

....

Sub : Proposal for (1) moving for enhancement of sentence in respect of accused Nos. 2,4 and 6, (2) for moving for separate sentences to the convicted accused about some offences and (3) for moving Govt. to prefer an appeal against the acquittal of accd. Nos. 5,8 and 9 in respect of offences punishable under sections 147, 447 and 337 read with section 149 and acquittal of all the accused under Sec. 436 of the Indian Penal Code.

.....

"In enclosing herewith a copy of the Judgment in the above case, I have the honour to state that nine accused were tried by the Additional Sessions Judge, -- Bijapur, in Sessions Case No. 37 of 1953 on a charge of offences punishable under section 148, 147, 447 and 337 302 and 436 read with section 149 of the Penal Code. Accd No. 6 was further charged under section 19(f) of the Arms Act.

2) The Additional Sessions Judge, Bijapur, convicted accused Nos. 1,2,3,4,6 and 7 under sections 447, 337, 302 and 426 read with section 149 I.P.C. He convicted accused No. 6 under section 148 of the Indian Penal Code and section 19(f) of the Arms Act. He convicted accused nos, 1,2,3,4 and 7 under section 147 of the Indian Penal Code.

He sentenced accused Nos. 1,2,3,4,6, and 7 to transportation for life under section 302 read with --- section 149. He did not pass separate sentences on them in respect of other offences of which he convicted them. He did not convict the accused under section 436 but convicted them under section 426. He acquitted accused Nos. 5.8. and 9.

3) Normal sentence in respect of murder is sentenc of death and sentence in respect of accused Nos. 2 and 4 & 6 ought to be death sentence.

If we look to the motive for the commission of the crime it is apparent that accd. No.2 bore a grudge against Kantappa since the date of the murder of his -- brother Appasaheb. Further the evidence will point out that on day of the offence accused No. 2 accompanied by accd. Nos. 3 and 4 went armed with his gun presumably to waylay and to murder Kantappa. He was unsuccessful in his attemp to murder him in S,No. 121. It is evidently, therefore, that he thereafter collected some more men and accd. No.2 along with 9 others became members of unlawful assembly with the common object of committing the murder of Kantepp and , in fact murdered him in prosecution of their -- common object. The murder of Kanteppa was the result of premediatation by accused No.2. Kanteppa's head was -- severed. The portion of the head was carried by some and the rest of the body was dragged by others and both were taken in front of hut in S.No. 11/3. It was a -- brutal murder and accused No. 2 was mainly responsible for the murder of Kanteppa.

Gurashidappa went ahead when the assailants came towards him and others. He was requesting the assailants to refrain from committing the wrongs. He was shot at by accused No.6 with the result that he dropped down to the ground- After Kanteppa was murdered as said above and after the assailants brought the head and the rest of the body of Kanteppa near the hut, the assailants brought Gurshiddappa near that hut and finding him to be still alive, he was given blows with axe and was done to death. The act of giving blows was done by accused ~~Nos~~ No. 4 (vide Exhs. 78. 79 and 80).

After Kanteppa and Gurshiddappa were done to death their bodies were thrown in the hut and the hut was set fire to.

In view of these circumstances, it is apparent that accd. Nos, 2,4 and 6 have taken major part and in the case of these three persons there appears to be no extenuating circumstances and, therefore, it is advisible to move the High Court for enhancement of sentence in the case of these three accused.

4) It would be clear by reference to the findings of the Court that the Court has held accused No. 6 to be guilty under section 148, accused Nos. 1,2,3 and 4 and 7 to be guilty under sections 337, 426 read with section 149 all these 6 accused to be guilty under section 447 and accused No. 6 to be guilty under section 19(f) of the Arms Act. It is, -- therefore, necessary to move the High Court for passing separate sentences in respect of these offences as well.

5) The charge against the accused was under section 436 of the Indian Penal Code. The evidence of Shivarudrappa (Exh.60) (Para 1) shows that the hut which was set fire to was of hay, that Ramangouda was tethering his cattle some times there. Shivarudrappa has stated that Ramangauda was also keeping some such things as ropes there. In view of this evidence which is not at all challenged by the defence, the learned Judge ought to haveheld that the offence committed by the accused was one punishable under sec. 436 and not merely one punishable under section 426 of the Indian Penal Code. It may, therefore, be seen that acquittal of the accused in respect of the offence punishable under section 436 of the Indian Penal Code is erroneous.

6) Accused Nos. 5,8 and 9 have been acquitted by the learned Judge for the reasons stated in para 75 of the Judgement. The evidence of Exhs. 60, 63, 78 and that of Exh. 86 would clearly establish that these accd. went along with the other accused, that they went in their company and trespassed into S.No. 11/3. when all along firing by accused No. 6 with the gun in his hands was going on. The learned Judge, therefore, ought to have held them to be guilty at least under section 147, 447 and 337 read with section 149 of the Indian Penal Code. Their names appear in the first information Exh. 61.

In view of what is stated above, I request you to move the Govt. to move the High Court for enhancement of sentence in respect of accused Nos. 3,4 and 6 and for awarding separate sentences in respect of the accused who have been convicted in respect of other offences and for preferring an appeal against acquittal of the six accused in respect of offences under section 436 read with sec. 149 and against the acquittal of accusedNos. 5,8,. and 9 in respect of offences punishable under section 147, 447 and 337 read with section 149 of the Indian Penal Code.

I will forward a copy of this report to the Remembrancer of Legal Affairs, Bombay along with uncertified copy of the judgment. I have applied for certified copy of judgment on 29.9-1953 and I will forward it to the Remembrancer of Legal Affairs, as soon as I get the certified copy of the Judgment (Pl. vide Govt. circular Legal Department No. 1710 dated 14-2-1949)

The address of the accused is the same as in the Judgement."

Copy of endorsement No. 1353 dated 13-10-1953 fr
from the Public Prosecutor Bijapur.

"Returned with compliments to the District Magistrate Bijapur.

I have to respectfully state that in the -- circumstances in this case copies of other papers do not appear to be necessary.

The six accused are convicted under sec. 302 The normal sentence in case of conviction under sec. 302 is sentence of death. The circumstances narrated by me in my report No. 1296 dated 3-10-1953 appear to justify the view of there being no sufficient grounds to impose a lesser penalty of transportation for life. The reasons on which the learned Judge imposed lesser penalty appear in para 88 of the Judgment.

The learned Judge has convicted the six accused under other sections as well as is clear by reference to para 87 of the Judgment. But he has awarded no -- separate sentences.

The learned Judge did not convict the six accd. under section 436 but convicted six of them under sec. 426 of the Indian Penal Code for reasons appearing in para 82 of the Judgment. Conviction should thus have been under section 436 and not merely under section 426

As regards the acquittal of accd. Nos. 5,8, & 9 the reasons appear in para 76 of the Judgement. There are no circumstances by which it can be said that accd. Nos. 5,8, and 9 might be spectators.

(2) The six accused who stand convicted have, I am told preferred an appeal to the High Court.

(3) I therefore respectfully submit that under the circumstances copies of other papers do not appear to be necessary.

Statements of witnesses cover several pages and it would take much time to prepare their copies.

If however you think that copies should be got made and sent to you I may be informed accordingly so that I will get made copies of them and forward the sam to you.

(4) As regards certified copy of the Judgement, I have the honour to state that I applied for it on -- 29-9-1953. It is not delivered to me so far. I expect to get it in a short time.

According to Govt. circular No. 1710 dated 14-2-1949 Legal Department, I have to forward it to the Remembrancer of Legal Affairs. If however you direct me to send it to you I will do so as soon as I get it. In the absence of any such direction by you, I will -- forward it to the Remembrancer of Legal Affairs as soon I get it."

105
115

No. 1337 of 1953.
Office of the P.P.Bijapur.
28-10-1953.

To

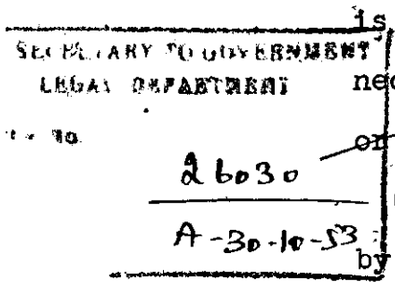
The Remembrancer of Legal Affairs,

Bombay Castle, Bombay No.I.

Subject:- Criminal Appeal No. 1372 of 1953 on the File of the High Court of Judicature, Bombay, against conviction and sentences in Bijapur Sessions Case No. 37 of 1953; and Government Circular, Legal Department No. 4912 of 31-3-1952.

Sir,

I have the honour to state ~~that it appears to be necessary~~ that the above appeal relates to a case which is important and complicated, and that, therefore, it is necessary to engage the services of the Government Pleader or even the Advocate General.



(2) This is a case wherein 9 accused persons were tried by the Additional Sessions Judge, Bijapur. The charge against them was that they committed roiting with deadly weapons, that one of them in prosecution of the common object of the unlawful assembly shot one Gurshiddappa with a gun, and the gun shots fired by him caused hurt to three other persons, that they trespassed into one land, that some of them murdered one Kanteppa by cutting him with axe and sword and severed his head from the trunk of his body, that they removed the seperate parts of the body of Kanteppa to a place in front of a hut in that field, that some of them removed Gurshiddappa who, as stated above, had been shot at, and brought him near the parts of the dead body of Kanteppa, that one of them gave axe blows to Gurshiddappa and killed him, and that thereafter, they threw both the dead bodies in the hut in the field and set fire to the same, and that thereby all of them committed offences punishable under Secs.148 and 447 and offences punishable under Sec.337,302 and 436 read with Sec.149 of the Indian Penal Code, and that accused No.6 committed an offence punishable under Sec.19(f) of the Indian Arms Act.

(3) The defence in this case was conducted by Shri A.A. Mandgi Advocate Bombay, and by 4 local pleaders here.

(4) In this case Expert in Arms from Kirkee, Lecturer in Anatomy from B.J. Medical College,Poona, two Medical Officers and some other witnesses were examined by me in the Sessions Court in addition to those who had been examined before the Committing Magistrate.

There was one incident on the date of this offence in S.No.121 about 1½ miles away from the scene of offence prior to the commission of this offence. Therein accused Nos. 2,3,4 and 7 attempted to attack Kanteppa (one out of the two who were later murdered in S.No.11/3). Thereafter, the aforesaid four accused and 6 others went towards S.No. 11/3 and committed the offences for which they were tried in the present case.

(5) The learned Additional Sessions Judge convicted six of the accused persons under Sec.302 read with Section 149 of the Indian Penal Code and sentenced them to transportation for life and did not sentence any of them to death.

He convicted accused No.6 under Sec.148 and the other five accused under Sec.147 and all 6 of them under Sec.447,337, and 426 read with Sec.149 of the Indian Penal Code. But he did not pass seperate sentences in respect of these offences. He convicted accused No.6 under Sec.19(f) of the Indian Arms Act, but passed no seperate sentence. He acquitted all the 6 accused in respect of offence punishable under Sec.436. He acquitted accused Nos. 5,8 and 9.

I forwarded a report to the District Magistrate to move High Court to move Government for enhancement of sentence in respect of accused Nos. 2,4 and 6, for passing seperate sentences on the 6 convicted persons in respect of other offences of which they were convicted and to move Government to prefer an appeal against the acquittal of 6 accused in respect of an offence punishable under Sec.436 and to prefer an appeal against the acquittal of accused Nos. 5,8 and 9 in respect of their acquittal in respect of offences punishable under Secs. 147,447 and 337, read with Sec. 149 of the Indian Penal Code. The District Magistrate

+7'07

has forwarded the report to you in this respect under his No. MGR 2004 of 20-10-1953.

(6) I am of opinion that this appeal relates to an important and complicated case and that it is necessary to engage the services of the Government Pleader or even the Advocate General.

Yours faithfully,

A Ahmadi

Public Prosecutor,Bijapur.

107
125

Opinion in the case of State Vs.Ramchandra @ Ramappa Giddu Waddar and others.

.....

Nine accused were charged in this case for an offence under section 302 read with ss.149, 148, 447, 337 and 446 read with s.149 of the I.P.C. before the learned Additional Sessions Judge at Bijapur. Accused no.6 was further charged under section 19(f) of the Indian Arms Act.

2. The prosecution case was that on 30.8.1951 one Appasaheb, brother of accused no.2 was murdered by one Kanteppa and others. ~~But in February 1952~~ Kanteppa and seven others who were tried for that murder were acquitted in Feb.'52 ~~prosecution in respect of that offence~~. Kanteppa, after his acquittal began to stay at Vinchur. On 13.1.1953 Kanteppa, who had come from Vinchur to Shegnapur on 10.1.53, started to return to Vinchur in early morning, in company of one Shidraya and Shivrudra. Meanwhile Ramgouda, brother of Kanteppa saw accused nos.2, 3 and 4 armed with gun, sword and axes, going in the same direction by another route. He therefore with one Yeswant, overtook Kanteppa and others who had by the time reached s.no.121 of Jevur and succedded in pursuading them not to proceed further. Baslingappa the owner of s.no.121 invited the party to eat Hurda in his field.While they were eating Hurda, accused nos. 2, 3, 4 and 7 came from Jevur side. Accused no.2 had a gun in hand and others had sword and axes.

Inspite of entreaties by Basalingappa, accused no.2 started firing. One of the bullets grazed the ear of Yeshwant. Basalingappa being afraid ran to village Shengnāpur and Mahadevappa, brother of Kanteppa learning about the incident from Basalingappa went to Chadchan and gave an application to H.C.Dixit stating the information received from Basalingappa By this time, in the field s.no.121 Kanteppa and others receded on the firing and went to s.no.11/3. There Gurushidappa brother of Kanteppa came and all sat near a hut for about an hour or two. At that time the nine accused and one Seddanna came and started firing. Accused no.6, a discharged constable had the gun at this time. Gurushiddappa wwnt forward and requested the accused to stop firing but accused no.6 continued firing.Gurushiddappa was hit by a shot and fell down. Kenteppa and others receded in the Jowar crop in s.no.11/3 and one of the shots by accused no.6 hit Shivrudra below the knee. The accused surrounded Kanteppa in the Jowar crop and cut him with sword and axes. His head was severed and taken and his trunk dragged to a place in front of the hut in s.no.11/3 where Appasaheb was murdered. Kanteppa's head was put on the ground and pounded with astone. Gurushiddappa who was first shot was not dead yet. He was was brought there, cut and killed. Both the dead bodies were

113
29

were then placed in the hut in s.no.11/3 and the hut was set on fire. The first information was ultimately given by Shirudrappa at Chadchan at about 4 p.m. and after investigation, the accused were charged as above.

3. The accused pleaded not guilty. Accused nos. 5 to 9 did not admit their presence at the scene of the offence.

4. The learned Additional Sessions Judge, on the evidence and disagreeing with the unanimous opinion of assessors that none of the accused was guilty of any offence, convicted accused nos. 1, 2, 3, 4, 6 and 7 under s.302 read with s.149 I.P.C. and sentenced them to transportation for life. He acquitted accused nos. 5, 8 and 9 holding that they may have been present at the scene of the offence but no overt act had been attributed to them on the evidence and therefore they may be mere onlookers.

5. Though accused nos. 1, 2, 3, 4, 6 and 7 wer also held guilty and convicted of the other offences, no separate sentences were passed on the ground that they will have to be made to run concurrently with the sentence on the major offence. The learned Additional Sessions Judge has observed as under while passing sentence:

"As regards the sentence for the offence under sec. 302 read with section 149, I.P.C., there are circumstances in the case which refrain me from passing the extreme sentence of death when so many accused surrounded Kanteppa one cannot

115
131

be quite sure as to who exactly delivered the fatal blow, which put an end to his life. As regards Gurushiddappa, his murder was not premeditated and I think more than one person should also have been responsible for causing his death, and one cannot be sure as to who dealt the fatal blow. Accused no.2 felt that his brother Appasaheb had been murdered by Kanteppa and it is now even admitted in the prosecution evidence that Appasaheb was so murdered. That appears to have upset to some extent the balance of mind of ~~xxxxxx xx~~ accused no.2 and a suggestion is made during the course of the arguments that accused no.2 was always carrying the gun with him as he stood in constant fear of Kanteppa. I think therefore having regard to all the circumstances in the case that the proper sentence to pass in this case would be oneof transportation of life."

6. On the facts stated above, it is clear that this is a case of premeditated and planned murder most brutally executed. However the reasons given by the learned Additional Sessions Judge appear to be sound in principle for giving a lesser sentence on the facts of this case.

7. I do not advise that an application for enhancement of sentence be made as against accused nos. 2, 4 and 6 as suggested by the District Magistrate, Bijapur. In this connection the dictum laid down by the Supreme Court in 1953 S.C.J., page 532 may be perused for guidance.

8. As regards the proposal to file an appeal against the order of acquittal of accused nos. 5, 8 and 9, I think the reasoning of the learned Additional Sessions Judge is correct and I do not advise an appeal against the order of acquittal.

Bombay:
12th January 1954.

Government Pleader, High Court.

117
133

No. 1594/A
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 22nd January 1954.

To
The District Magistrate,
Bijapur.

Subject:- Appeal against acquittal and Revision-Application for enhancement of sentence in Sessions Case No. 37 of 1953.

Sir,

With reference to your letter No. M.G.P.2004, dated the 20th October 1953, on the subject noted above, I have the honour to inform you that Government does not consider this a fit case for filing an appeal nor a revision application to the High Court, Bombay.

2. Papers of the case accompany.

Yours faithfully,

for Remembrancer of Legal Affairs.

P.T.O.

Submitted for signature

134

Copy to

The Public Prosecutor, Bijapur.

The Range Deputy Inspector General of Police, Southern Range, Belgaum.

Submitted after issue
file in Cr.A Bij/53
JKK
25/1

D.S.(C.L.) DW 27/1

Cr.A- Bij/53
28/1/54

119
F 3/54

L.D.R.I. No. 25727
dated 27- October -1953.

Submitted.

2. This is a proposal from the Public Prosecutor Bijapur for an appeal to the High Court against the order of the Sessions Judge, Bijapur dated 30- Sept -1953. P3

3. The District Magistrate of Bijapur ~~recommends/does not recommend~~ agrees with the P.P.

4. The Public Prosecutor of Bijapur recommends/~~does not recommend~~ an appeal in ref of Acc Nos 29 & 46. P3

5. The Government Pleader, High Court, Bombay [advises/does not advise] not consulted.

6. Administrative period expires on 30-12-53
Limitation period expires on

7. Certified copy of judgment is need
and the correct latest addresses of the parties concerned are/are not received.

29/1

DS(G)

HSP/2/7

RCA

Secy H.D

+37

D.S.(Criminal)

Fifty persons were prosecuted before the Sessions Judge, Bijapur. The charges against them were of rioting (section 148), attempt at murder (sec.307), grievous hurt (sec.326) and of rash and negligent act endangering human life (sec.338) in the prosecution of the common object of an unlawful assembly. They were tried with the aid of four assessors. Three of the assessors were of the opinion that the only persons who were guilty were accused 2, 41, 42 and 43. One assessor was of the opinion that accused Nos.29 and 46 were also guilty in addition to the above four. All the assessors agreed that the rest of the accused were not guilty. The learned Judge agreed with the majority opinion and held accused Nos. 2, 41, 42 and 43 guilty of various offences and acquitted the rest of the accused. The Public Prosecutor and the District Magistrate, Bijapur recommend an appeal against the acquittal of accused Nos. 29 and 46. In my opinion, however, this is not a fit case for appeal.

The facts in brief are these: Four persons who are the four principal witnesses in this case were proceeding by cart from village Muttur to the neighbouring village Zunjurwad. These four persons were: (1) Nanappagouda (ex.3), Bhimappa (ex.11), Shankargouda (ex.13) and Appugouda (ex.14). The cart was passing through a creek when it was fired on from the mounds on some of the sides of the creek, namely, west, south-west and the east. In that firing three of the four persons received serious injuries. Bhimappa received grievous hurt. Nanappagouda had a gun with him and he fired in return, at which the assailants ran away. The four persons in the cart went back to the chavdi at Muttur. The Police were informed. Bhimappa's condition was serious. He was removed to a dispensary where his dying declaration was recorded. Fortunately, however, he survived. The first information

in....

in this case was given by Nanappagouda, one of the injured persons. That information was given about four hours after the incident. Investigation started and eventually all these accused were put up for trial.

The learned Judge has acquitted 46 out of the 50 accused. The Public Prosecutor concedes that the acquittal of 44 out of these 46 is not wrong. His grievance is only against the acquittal of only two accused, namely, accused Nos. 29 and 46. The evidence against these two accused was wholly oral and was no doubt the same as the evidence against the four accused who were convicted, namely, accused Nos. 2, 41, 42 and 43. The whole burden of the argument of the Public Prosecutor is that the learned Judge having accepted the oral evidence against these 4 accused, he ought to have accepted that oral evidence against these two accused also. That argument has been answered by the learned Judge in paragraph 45 of his judgment where he points out why the case of these two accused is not as strong as the case of the other four. The Judge concedes that these two accused may also be concerned with the commission of the crime but for reasons given by him in para.45 of the judgment, he holds that there is also a doubt as to their complicity. He gives the benefit of that doubt to these accused.

The evidence in brief against these accused is the oral testimony of the four persons who were in the cart and the dying declaration of Bhimappa. Now, out of the four persons in the cart three are held by the Judge to be persons who are not witnesses of truth. The Judge has discussed the evidence of these three persons in paras. 34 to 37 of the judgment and given reasons why they cannot be relied except on points on which they are corroborated. He considers that Bhimappa is the only truthful witness and it is on the basis of Bhimappa's evidence that he has based his conclusion about the guilt of these accused. Now Bhimappa has implicated

these....

these two accused also, namely, accused Nos. 29 and 46 and he has mentioned them in his dying declaratio but whereas the other accused have been mentioned i the dying declaration in the beginning, these two accused come ~~in~~ at the fag end of the dying declaratio after Bhimappa had exhausted his story, ~~thereby~~ The suggesting that the names of these two accused were probably mentioned as a result of a suggestion to Bhimappa. Besides, in the Sessions Court Bhimappa does not ascribe any overt act to that group of persons in which these two accused were included. In an earlier statement he had stated that that group also had fired on the four people in the cart but in his statement to the Court he was not prepared to ascribe the act of firing to the group to which accused Nos. 29 and 46 belonged. Neither of these two accused were from Muttur or Zunjurwad. One of them is from Bagewadi and the other from Savdi. Whatever enmity there was between the cartmen and the assailants related to the villages of Muttur and Zunjurwad. In these circumstances, the learned Judge held that there was room for doub in respect of these two accused.

The matter is one of appreciation of evidence. Having gone through the judgment, I do not think it will be possible to persuade the High Court to take a different view or to show that there are any substantial or compelling reasons for not accepting the learned Judge's appreciation of the evidence against these accused. I therefore do not recomme an appeal in this case.

Sd/- Y. Y.
13-11-53

R.I.P. G.P. H.C. may be consulted in respect of accused nos 29 & 46

13/11

P·17-21/c

* G.P.H.C.'s opinion is read. He does not advise an appeal against acquittal.

KK
20/1

Supdt. 20/1

D.S.(C.L.) The opinion of the G.P.H.C may be accepted

Whitmore
21/1

R.L.A.

The reasons given by the Sessions Judge for disregarding the cases of accused nos 2, 9 and 46 are fairly cogent and entitle them to the benefit of doubt. I agree that this is not a fit case for appeal

R
21/1

Secretary 21/1/54

Y 1556/A-
22·1·54

R
21/1

127 H/T
B 3

No. 1318 of 1953.
Office of the P.P.Bijapur.
6-10-1953.

To

The District Magistrate,

Bijapur.

Subject:- Proposal for preferring an appeal against the acquittal of accused Nos. 29 and 46 in Bijapur Sessions Case No. 53 of 1953 by the Sessions Judge, Bijapur.

Sir,

In enclosing herewith an uncertified copy of Judgment in the above case, I have the honour to state that it is a fi case for preferring an appeal to the High Court against the acquittal of accused Nos. 29 and 46.

(2) The facts and the evidence are set forth in the Judgment. The evidence of Exs. 3,11,13 and 14 has been acted upon by the Sessions Court in convicting four of the accused. There is no reason for not acting upon that evidence in respe of accused Nos. 29 and 46.

The names of accused Nos. 29 and 46 appear in the first information,Ex.4. Their names appear in Ex.12 which is a statement of Ex.11 recorded by a Magistrate in about 4 to 5 hours after the occurance.

Ex.15 has also mentioned the names of these two accuse

It may thus be seen that the four persons (Exs. 3,11, 13 and 14) who were going in a cart saw and identified accuse Nos. 29 and 46 from amongst the persons who from the eastern maund were firing at Ex.3 and his companions. All these four witnesses knew accused Nos. 29 and 46 before the offence and they knew them even by their names. The occurance itself took place in broad day light at about 1 P.M. There can, therefore, be no question of any mistaken identity in respect of these two accused. When the aforesaid four witnesses turned back and went towards the Chavdi, the group of the offenders including the convicted accused and accused Nos. 29 and 46 were proceeding (presumably towards the Chavdi in order to wreak further vengence on Ex.3 where ultimately by going over the roof of a house infront of the Chavdi accused No.41 fired

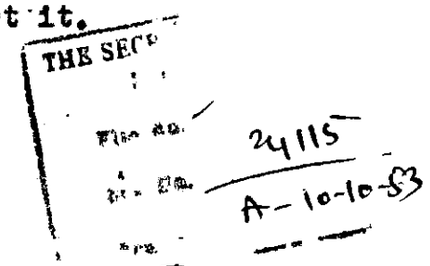
shots and injured one of the companions of Ex.3 for which the learned Judge convicted accused No.41 in this case for that offence as well), One of them namely accused No.43 and another caused grievous hurt to Bhimangouda who was proceeding in that direction on hearing the reports of gun. This Bhimangouda, Ex.15, has also mentioned the names of accused Nos. 29 and 46 as being in that group. Accused No.29 was absconding for over a month and was arrested on 9-1-1953 in Bijapur. Accused No.46 was absconding for over six months and was arrested on 22-6-1953.

3. The learned Judge has dealt with the case of accused Nos. 29 and 46 in Para 45 of the Judgment. He observed as follows:- "So, prima facie, the case against them appears to be good". The reasoning of the learned Judge in giving benefit of doubt is in view of facts stated in Para 2 above is erroneous.

4. I, therefore , request you to move the Government for preferring an appeal against the acquittal of accused Nos. 29 and 46.

I have forwarded this report to you in duplicate

I will forward a copy of this report to the Remembrancer of Legal Affairs,Bombay, with an uncertified copy of Judgment. I have already applied for a certified copy and I will forward it to the Remembrancer of Legal Affairs, as soon as I get it.



Yours faithfully,

Sd. A.C.Anvadi.

Public Prosecutor,Bijapur.

No. 1319 of 1958.
6-10-1953.

Copy with uncertified copy of Judgment forwarded with respects to the Remembrancer of Legal Affairs.Bombay.

Anvadi

Public Prosecutor,Bijapur.

129

No. 1387 of 1953.
19-10-1953.

From

Shri A.C.Angadi,B.A.LL.B.,
Public Prosecutor,Bijapur.

To

The Remembrancer of Legal Affairs,
Secretariat, Bombay Castle,
Bombay No.1.

Subject:- Proposal to prefer an appeal against the acquittal of accused Nos. 29 and 46 in Bijapur Sessions Case No. 53 of 1953.

Sir,

In continuation of my endorsement No. 1319 dated 6-10-1953 forwarding to you my report No. 1318 of 6-10-1953 to the District Magistrate Bijapur, I have the honour to forward herewith certified copy of Judgment of the trial Court together with the opinion of the Assessors.

Yours faithfully,

Angadi

Public Prosecutor,Bijapur.

25399

A-23-10-53

A-292

THE SECR...
File No. 25727
Sub No. A-27-X-53

No. MGP
District Magistrate's Office,
Bijapur, 22-10-1953.

From

Shri H.T.Sachwani, I.A.S.,
District Magistrate, Bijapur.

L.D.
26 OCT 1953

The Secretary to Government,
Legal Department, Bombay.

Subject :- Proposal for preferring an appeal against an acquittal of accused Nos. 29 and 43 in Bijapur Sessions Case No. 53 of 1953 by the Sessions Judge, Bijapur.

Sir,

I enclose a copy of the letter No. 1318 dated 6-10-1953 from the Public Prosecutor, Bijapur, and have to state that I agree with the Public Prosecutor and request you to move Government to prefer an appeal against the acquittal of accused Nos. 29 and 43.

The Public Prosecutor in his endorsement No. 1355 of 1953 dated 14-10-1953 (copy enclosed) states that the case against the accused in question is dealt with in para 45 of the judgment itself and copies of other papers do not appear to be necessary. However, the copies of the papers viz., Exhs. 3, 11, 13, 14, 15 and 4 which he had taken during the trial are sent herewith. He requests to ignore the notes made by him on them.

One uncertified copy of the judgment of the Sessions case in question is also enclosed. Another copy of the same has already been sent to the G.L.A., Bombay direct by the Public Prosecutor. As regards the certified copy of the judgment, I have to state that the Public Prosecutor has already applied for it and it is not yet delivered. I have asked the Public Prosecutor to send it direct to Government immediately it is received.

Yours faithfully,

District Magistrate, Bijapur.

149 of 133

No. 1318 of 1953
Office of the P.P. Bijapur
6-10-1953.

To

The District Magistrate,
Bijapur.

Subject : Proposal for preferring an appeal against the acquittal of accused Nos. 29 and 46 in Bijapur Sessions Case No. 53 of 1953 by the Sessions Judge, Bijapur.

Sir,

In enclosing herewith an uncertified copy of judgment in the above case, I have the honour to state that it is a fit case for preferring an appeal to the High Court against the acquittal of accused Nos. 29 and 46.

The facts and the evidence are set forth in the judgment. The evidence of Exs. 3, 11,13, and 14 has been acted upon by the Sessions Court in convinting four of the accused. There is no reason for not acting upon that evidence in respect of accused Nos. 29 and 46.

The names of accused Nos. 29 and 46 appear in the first information, Ex. 4. Their names appear in Ex. 12 which is a statement of Ex. 11 recorded by a Magistrate in about 4 to 5 hours after the occurance.

Ex. 15 has also mentioned the names of these two accused.

It may thus be seen that the four persons (Exs. 3, 11, 13 and 14) who were going in a cart saw and identified accused Nos. 29 and 46 from amongst the persons who from the eastern maund were firing at Ex. 3 and his companions. All these four witnesses knew accused Nos. 29 and 46 before the offence and they knew them ever by their names. The occurance itself took place in broad day light at about 1 p.m. There can, therefore, be no question of any mistaken identity in respect of these two accused. When the aforesaid four witnesses turned back and went towards the Chavdi, the group of the offenders including the convicted accused and accused Nos. 29 and 46 were proceeding (presumably towards the Chavdi in order to wreak further vengence on Ex. 3 where ultimately by going over the roof of a house infront of the Chavdi accused No. 41 fired shots and injured one of the companions of Ex. 3 for which the learned Judge convicted accused No. 41 in this case for that offence as well), one of them namely accused No. 43 and another caused grievous hurt to Bhimangouda who was proceeding in that direction on hearing the reports of guns. This Bhimangouda, Ex. 15, has also mentioned the names of accused Nos. 29 and 46 as being in that group. Accused No. 29 was absconding for over a month and was arrested on 9-1-1953 in Bijapur. Accused No. 46 was absconding for over six months and was arrested on 22-6-1953.

The learned Judge has dealt with the case of accd Nos. 29 and 46 in para 45 of the judgment. He observes as follows : "So, prima facie, the case against them appears to be good." The reasoning of the learned Judge in giving benefit of doubt is in view of facts stated in para 2 above is erroneous.

I, therefore, request you to move the Government for preferring an appeal against the acquittal of accused Nos. 29 and 46.

I will forward a copy of this report to the Remembrancer of Legal affairs , Bombay, with an uncertified copy of Judgement. I have already applied for a certified copy and I will forward it to the Remembrancer of Legal Affairs, as soon as I get it.

Yours faithfully,

Public Prosecutor, Bijapur.

Below District Magistrate's No. MGP.2005 of 13-10-1953.

No. 1355 of 1953
Dated 14th October 1953.

Returned M.Cs. to the District Magistrate, Bijapur.

1. I have sent herewith copies of Exs. 3, 11, 13, 14, 15 and 4 which I had taken during the trial of the case. Ex. 4 bears my notes in ink and those notes may be ignored

2. I have to respectfully state that in the circumstances in this case copies of other papers are not necessary for consideration of the question as to whether an appeal should be preferred or not against the acquittal of accused Nos. 29 and 46.

As stated by me in my report No. 1318 of 8-10-1953, the case against accused Nos. 29 and 46 is dealt with in para 45 of the judgment and my reasons for preferring appeal are mentioned by me in paras 2 and 3 of my above report.

3. As regards certified copy of the judgment, I have already applied for it. It is not delivered to me so far. I will get it after some time.

According to Government circular I have to send it to the Remembrancer of Legal Affairs. If, however, you direct me to send it to you, I will do so.

In the absence of any such further direction by you, I will forward it to the Remembrancer of Legal Affairs as soon as I get the certified copy.

s/-

Public Prosecutor, Bijapur.

Opinion in the case of State Vs. Dhanavanta Rayappa Halingali and another.

.....

In all 50 persons were charged in this case before the learned Sessions Judge at Bijapur, for offences under ss. 148, 307, 338 and 326 read with s.149 I.P.C. Some of the accused were also charged under s.19(f) of the Indian Arms Act.

2. The prosecution case was that on 6.12.1952 at about 10 a.m. complainant Nanappagouda with Bhimappa, Shankergouda, Appugouda, Pirappa Sanadi and Bhimanagouda were returning from Jamkhandi. They reached Muttur at about 12 noon. Sanadi Pirappa and Bhimanagouda who is the Police Patil of Muttur got down from the cart and went to Chavdi. As the cart proceeded and entered a creek, four persons in the cart heard gun shot reports from the east. They stood up on the cart and saw about 15 persons with guns, pistols and other weapons in hand standing on a mound on the east. Five six persons similarly armed were also seen in the south east. Some persons from the eastern mound fired shots.so all got down from the cart. But one shot struck Nanappagouda and three struck Bhimappa. Nanappagouda who also had a gun fired in air. The persons on the mound and on the south east therefore receded in the Jowar crop. As the four persons in the cart tried to return to the Muttur, the cart turned turtle. They therefore returned on foot. They then saw 25-40 persons in the west armed with

-161 139

arrows weapons. They also went to the Jowar crop to their east as Nanappagouda fired. The four then went to Chavdi, Bhimappa who was seriously injured being supported by the others. Some persons, including accused no.41 then went to top of the house near by and fired on the four persons. Shankergouda was hit and injured. Those persons disappeared again as Nanappagouda fired and by this firing one Dundappa was injured. P.S.I.Ronad who heard of the incident came to the scene at about 4-30 p.m., with a doctor and Magistrate. Nanagouda's statement was recorded wherein he gave about 43 names. The injured were treated and dying declaration of Bhimappa was recorded. This declaration mentioned nine names and added that other assailants were not identified. After further investigation the accused were charged as above Themotive alleged was enmity due to previous prosecution, rivalry in elections etc.

3. The accused pleaded not guilty and stated that they were falsely involved.

4. The learned Sessions Judge has convicted accused nos. 2, 41, 42 and 43 and has acquitted the rest.

5. The evidence against accused nos.29 and 46 in respect of whom an appeal against the order of acquittal is proposed, has been summarised by the learned Sessions Judge in para 45 of the judgment. The learned Sessions Judge

141

had laid stress on the fact that in the dying declaration (Ex.12) of Bhimappa, the names of these two persons are mentioned at the end as persons who fired at him whose shots hit him, but the fact of firing by accused nos. 29 and 46 is not mentioned in the evidence in Court. It is stated that if the shots of these accused had caused injuries to Bhimappa, their names would have been mentioned first in the dying declaration and would not have been omitted while giving evidence in the Court. Benefit of doubt is therefore given to these two accused.

6. The reasons given by the learned Sessions Judge for giving benefit of doubt are not without force. The case turns entirely on appreciation of the evidence of the five eye-witnesses and there appear no compelling reasons to file an appeal against their acquittal.

7. I do not advise an appeal against the order of acquittal in this case.

Bombay:

14th January 1964

Government Pleader, High Court.

143
+62

No. 2413-A
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 3rd February 1

To
The District Magistrate,
Bijapur.

Subject:- Appeal against acquittal in Sessions Case No. 53 of 1953.

Sir,

With reference to your letter No. HGP dated the 21st October 1953, I have the honour to inform you that Government does not consider this a fit case for filing an appeal to the High Court against the order of acquittal passed on accused Nos. 39 and 46.

2. Papers of the case accompany.

Yours faithfully,

for Remembrancer of Legal Affairs.

Copy to
The Public Prosecutor, Bijapur.

166

Submitted after recess

File in CA Bij/53

4/2

4/3

DS(HL)

4/2

Cr A Bij/53
6/4/54

No. 6388

IMMEDIATE

Office of the
Government Pleader, High Court,
Bombay: 18th August 1953.

From:

Shri H.M.Choksi, B.A.(Hons.), LL.B.,
Government Pleader, High Court.

To:

The Remembrancer of Legal Affairs,
Bombay.

Subject: Filing of an enhancement application in
Bijapur Sessions Case No.23/53.
Maktumsab Miyasab & ors. Vs. State.

Sir.

...

When the appeal filed by the accused came up for admission, Their Lordships expressed their opinion that this matter may be looked into with a view whether an application for enhancement of sentence should be filed; and if the Government is of the same view, such an application may be filed as early as possible.

The appeal filed by the accused was dismissed summarily.

Yours faithfully,

Government Pleader, High Court.

...AY TO GOVERNMENT
...L DEPARTMENT
20342
...: A-19-8-53

Immediate.

No. 17466/A

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 27 August 1953.

To

The District Magistrate,
Bijapur.

Subject:- Filing of an enhancement application in
Bijapur Sessions Case No. 23/53.
Maktumsab Miyasab & Ors. Vs. State.

Sir,

I have the honour to forward herewith a copy of the letter from the Government Pleader, High Court, Bombay No. 6388 dated the 18th August 1953 and to request you to forward a copy of the Judgment of the Sessions Court and your report whether this is a fit case to file a revision application to the High Court. Please forward along with your report a copy of the Public Prosecutor's opinion.

Please treat the matter as Immediate and forward your report so as to reach this office before 28th August 1953 without fail.

Yours faithfully,

for Remembrancer of Legal Affairs.

Express Delivery

No. M.G.R. 404
District Magistrate's Office,
Bijapur, 27-8-1953.

From

Shri [illegible].T.Sadhwani, I.A.S.,
Collector of Bijapur.

To

The Remembrancer of Legal Affairs,
Bombay.

21115
A-29-8-53

L.D.
28 AUG 1953

Subject :- Filing of an enhancement application in Bijapur Sessions Case No. 23/53 Maktumsab Miyasab and others Vs. State.

Reference: Your letter No. 17466/A dated 20-8-1953

With reference to your letter quoted above, I am forwarding herewith a certified copy of the judgment of the Sessions Judge, Bijapur, in Sessions Case No. 23 of 1953 (State vs. Maktumsab Miyasab and two others). I also enclose herewith the opinion of the Assistant Public Prosecutor, who conducted the Sessions Case, and the endorsement of the Public Prosecutor thereon. Both the Assistant Public Prosecutor and the Public Prosecutor are of the view that this case is not a fit case formoving the High Court in Revision for enhancement of the sentence.

I, however, am of the opinion that this is a case in which Government may move the High Court for the enhancement of the setence imposed upon accused No. 1.

The reasons indicated by the Assistant Public Prosecutor for holding the view expressed by him are two, vi (1) Accused No. 1 had an injury which was an abrasion 6" x 1/10" on the right lower back from the middle of the scapula to the upper lumber vertibra and (?) Accused No. 1 saw the deceased sitting openly with Davalma who is a near relative of accused No. 1 suggesting thereby that the accused committed the offence in the heat of the moment. The Assistant Public Prosecutor also relies upon para 31 of the judgment of the Sessions Judge.

As regards the injury on the person of the accused in view of the fact that Accused No. 1 had not at all contended that he killed the deceased in exercise of his right of private defence, the injury is of no consequence. The learned Sessions Judge himself has felt that the injury was so slight that it could be caused by a simple accident or it may be a self-inflicted. In fact he has stated that the injury could be caused by the accused if he scratched his back with his finger nail and the Sessions Judge has als pointed out that there is no evidence to show that the injury had been caused at the time of the offence (para 26 of the judgment)

As regards the second ground, it is admitted on all hands that the deceased had maintained an illegitimate connection with Davalma for the last 20 years or so and this connection had been carried on even during the life time of the husband of Davalma, who died about four years back. Accused No. 1 is not so closely related to Davalma, being only the brother of her sister's husband. In view of the fact that the illicit connection between the deceased and Davalma had subsisted for more than 20 years and that the husband of Davalma had also died four years back, it is difficult to say that the accused No. 1 ha committed the crime in the heat of the moment. The arguments in icated in para 31 of the judgment of the learned Sessions Judge do not appear to be such as to justify the sentence of transportation of life instead of the setence of death.

With reference to accused Nos. 2 and 3 I agree that the evidence does not appear to be such as to bring home to them the offence of murder.

District Magistrate, Bijapur

Below D.M.'s No. M.G.R.-404 of 25-8-1953.

Forwarded with compliments to the Assistant Public Prosecutor Shri G.L.Kanbur for remark.

25-8-1953. Public Prosecutor.

Returned with compliments to Public Prosecutor, Bijapur.

I am of opinion that this is not a fit case for preferring an application to the High Court in revision for enhancement of sentence.

The accused (accused No.1) had an injury which was an abrasion 6"x1/10" on the right lower back from the middle of scapula to the upper lumber vertibra.

Accused No.1 saw the deceased sitting openly with Dawalma who is a near relative of accused No. suggesting thereby that the accused committed the offence in the heat of the moment.

In view of these circumstances and for reasons stated by the Sessions Court in para 31 of the Judgment, I am of opinion that this is not a fit case for moving the High Court in revision for enhancement of sentence.

26-8-1953. Assistant Public Prosecutor, Bijapur.

Returned with compliments to the District Magistrate, Bijapur.

I received your endorsement No.M.G.R.404 of 25-8-1953 at about 5-45 P.M. after my return after conducting a double murder case in the Court of the Additional Sessions Judge, Bijapur.

2. I agree with the opinion of the Assistant Public Prosecutor Shri G.L.Kanbur.

26/8 12-45 P.M.

3. A copy of the opinion of the Assistant Public Prosecutor along with the copy of this endorsement of mine may please be sent to the Remembrancer of Legal Affairs, Bombay by Express delivery post just today.

4. As for the copy of the Judgment of the Sessions Court, it may be seen that it covers more than 20 pages

It is being typed now by my office clerk. It will be sent to you immediately after it is ready.

A Rusad

Public Prosecutor,
Bijapur.

153

Opinion in the case of State Vs. Maktumsab Miyasab and others.

In this case three persons were charged under section 302 read with section 34 and section 449 of the I.P.C. in the Court of the Sessions Judge at Bijapur. The accused were tried by the learned Session Judge with the aid of Assessors. Three of the Assessors gave their opinion that accused no.1 was guilty under section 302 of the Indian Penal Code and accused nos. 2 and 3 were guilty under section 302 read with section 34 of the Indian Penal Code and that they were guilty of trespass. One of the assessors was of the opinion that the accused nos. 1 and 3 were not guilty. The learned Sessions Judge came to the conclusion that accused no.1 was guilty of murder under section 302 I.P.C. and also of house trespass under sectio 448 of the I.P.C. He held that accused nos. 2 and 3 were guilty under sections 323 and 448 of the Indian Penal Code.

2. As regards the sentence of accused no.1, the learned Judge observed:"Now about sentence. Accused No.1 saw the deceased, the paramour of Davalama, his near relative, sitting openly in the latter's shop and it appears that he committed the offence in the heat of the moment. It is true that he had brought an axe with him. But agriculturists may carry axes with them when going to their fields, and so premeditation cannot be held proved.

In these circumstances, the ends of justice would be met if instead of giving the capital punishment to him, he is transported for life." The learned Sessions Judge therefore sentenced the accused no.1 to transportation for life.

3. The deceased Siddangouda was the Police Patel of the village and he had kept Devalma, wife of Walikar Nabisab for about 20 years during the life time of her husband. Her husband died about 4 years back. She is the mother of three children. She is residing in her own house wherein she runs a grocery shop. Accused no.1 is the brother of his sister's husband whereas accused no.2 is the maternal uncle of accused no.1 and accused no.3 is their friend. These accused persons did not like the criminal intimacy between the deceased and Davalma. On November 23rd 1952, which was a Sunday, Devalma was sitting in her shop. At about 2 p.m. one Manappa went to the shop, brought tea powder and went away. At about that time, deceased Siddangouda came to her house and was sitting on the katta near the cattle shed. Shortly after Manappa left, accused no.1 went into the shop armed with an axe. He asked for beetle leaves and on his way back to the main door, he gave axe blows to deceased Siddangouda. Thereupon there was a struggle between the deceased,

accused no.1 and Devalma. The deceased fell on a matt. At about this time accused no.2 came from the front door with a Jambia and accused no.3 by the back door. The accused held the legs of the deceased and accused no.3 held his head. Devalma snatched the jambia from the hand of accuse no.1. Thereupon accused no.1 snatched the jambia from the hand of accused no.2 and caused him a number of stab wounds Thereafter all the accused lifted the deceased and threw him below the katta when the deceased was still alive. Accused no.1 gave two jambia blows on the neck of the deceased and deceased died.

4. This is a brutal murder by a person who was least interested in Devalma. Husband of Devalma took no objection to her relation with the deceased and this relation between Devalma and the deceased was a long standing one as is clear from the evidence. That being so, accused no.1 had practically no business to feel any grudge against the deceased for his illicit connection with Devalma. When he went to the shop of Devalma for the purpose of purchasing beetle leaves ~~xxxxxxx xxx xxxx~~ during the noon and found the deceased sitting openly as ~~he would~~ in the adjoining portion of the shop, This cannot be held as something which can give any offence to accused no.1. No reasonable man in the circumstances

which are narrated above and being related as remotely as accused no.1 was with Devalama would feel the slightest grudge because of the presence of the deceased in the house or in the shop of Devalma. He went armed with an axe and he immediately without slightest provocation or reason used the axe to kill the deceased and to finish him with the assistance of accused nos. 2 and 3 who pinned the deceased down to the ground and assisted accused no.1 in successfully killing the deceased. The case of this type is the grossest type of murder. It is difficult to appreciate as to how the learned Sessions Judge used the very circumstances which emphasise the brutal nature of the guilt as being circumstances mitigating its nature. To my mind, the only sentence for such an offence is death. I would therefore advise an application for enhancement of sentence as far as accused no.1 is concerned.

5. Though I am not asked to give my opinion about accused nos. 2 and 3, I feel very doubtful whether their conviction on the findings which the learned Sessions Judge has recorded, under section 323 I.P.C. is correct. The learned Sessions Judge does hold that accusednos. 2 and 3 did assist accused no.1 by holding the deceased in themanner described by the prosecution and enabled accused no.1 to finish the deceased without any further struggle and still he curiously holds that they were not guilty under section 302 read with section 34 of the I.P.C. The fact

that accused no.2 ran to the spot with a jambia and the fact that accused no.3 ran to the spot and both of them held the deceased and pinned him down to the ground while accused no.1 killed the deceased does suggest the common intention between accused nos. 1, 2 and 3.as may fall within section 34 I.P.C. In my opinion accused nos. 2 and 3 should have been convicted also under section 302 read with section 34 I.P.C. and should have been awarded the sentence of transportation for life. I should advise an appeal against the acquittal of accused nos. 2 and 3 under section 302 read with section 34 I.P.C.

Bombay:
30th September 1953.

Government Pleader, High Court.

159

Subd. P1

The G/HC B'bay states that while deciding the admission of an appeal against conviction Bijapur Sessions Case No 83/83, the High Court expressed a view that the question of enhancement of sentence should be considered by Govt and an application if considered necessary should be filed early.

The PP and the Asst P.P Bijapur P7 do not recommend an application for enhancement of sentence

The D.M., Bijapur whose opinion was P5 also called for recommends an application for enhancement of sentence in resp of Rec. No

To orders.

DSM

31/9

DS. (A)

I have gone through the judgment. This was a deliberate murder by accused no 1 and not a murder in the heat of the moment as suggested by the Sessions Judge in para 31 of his ~~stages~~ judgment. Accused no 1 has appealed against his conviction and the H. Court vide OM dtd 28/8/84 has noted at the time of admission

of appeal that the murder was deliberate and there was not sufficient reason for not inflicting the extreme penalty. The D.A. has in his report correctly pointed out that the arguments advanced for inflicting the lesser penalty are not convincing.

The Hon'ble Court has asked G.P. the to ~~consider whether~~ draw the attention of the Govt to this case in order to consider whether this is a fit case for enhancement. I think it is. But before taking a final decision we may consult G.P. the

Dean. Y. Yamb
31.8.53

Secy. mem
3/9/53

Subd.
The G.P.'s opinion is req. He advises an appln for enhancement of sentence in resp of Accd No 1 & appeal against the acquittal of the offence under s. 302 in resp of Accd Nos 2 & 3

3/x

DS. (G.) The advice of G.P. the may be accepted. Delay may be condoned

Dean. Y. Yamb
3-10-53

Addl Secy mem
5/10/53

5/10/53

Secy (H.)

M. (L.) } in favour of
C. M. } condoning delay

9/10

10/10

x 20051/A
5-x-53.

Criminal Applications. 141 - 26 - 165

In the High Court, Bombay --
for enhancement of sentence (Bijapur)

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 2096 46/A -
Bombay Castle, 16th October 1953.

Letter from the District Magistrate, Bijapur No.

In the Court of the Sessions Judge, Bijapur.	:	MGR/404, dated
Sessions Case No. 23 of 1953.	:	the 27th August
S t a t e.	:	1953 requesting
vs.		
1. Maktumsab Miyasab	:	that a revision
2. Dastagir Mirasab		
3. Rayappa Fakirappa	:	application under
(Offence under section 302 I.P.C.)	:	section 439

of the Code of Criminal Procedure, 1898, may be made to the High Court, Bombay for enhancement of sentence passed by the Sessions Judge, Bijapur on 28th May 1953 on the accused No. 1 in respect of the offence under section 302 I.P.C. in the case referred to in the margin.

RESOLUTION: The Government Pleader, High Court, Bombay is directed to file a revision application in the High Court, Bombay under section 439 of the Code of Criminal Procedure, 1898, for enhancement of sentence passed by the Sessions Judge, Bijapur on 28th May 1953 on the accused No. 1 in respect of the offence under section 302 I.P.C. in the case referred to in the margin.

By order and in the name of the Governor of Bombay,

Akbar S. Sarela 15/10

AKBAR S. SARELA,
Deputy Secretary to Government.

Sd/d for ung. To.
DSJ
15/x
DS/G.

The Home Department,
The District Magistrate, Bijapur,
The Government Pleader, High Court, Bombay (with the papers of the case),
The Public Prosecutor, Bijapur,
The Dy. Inspector General of Police, Southern Range.

hsp/14/10

Issued 16/X

Criminal Appeals.
Inthe High Court, Bombay --
against acquittal (Bijapur).

ITS 167 2-7

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 20947/A.
Bombay Castle, 16th October 1953.

In the Court of the Sessions Judge, Bijapur.

Sessions Case No. 23 of 1953.

S t a t e.
vs.
1. Maktumsab Miyasab,
2. Dastagir Mirasab, 3. Rayappa Fakirappa.
(Offence under section 302 read with section 34 I.P.C.)

RESOLUTION: The Government Pleader, High Court, Bombay is directed to file an appeal in the High Court, Bombay under section 417 of the Code of Criminal Procedure, 1898, against the order of acquittal passed by the Sessions Judge, Bijapur on 28th May 1953 on the accused Nos. 2 & 3 in respect of the offence under section 302 I.P.C. read with section 34 I.P.C. in the case referred to in the margin.

By order and in the name of the Governor of Bombay,

Original

Akbar Y. Sarela

AKBAR S. SARELA, 15/10
Deputy Secretary to Government.

To

The Home Department,
The District Magistrate, Bijapur,
The Government Pleader, High Court, Bombay,
The Public Prosecutor, Bijapur,
The Dy. Inspector General of Police, Southern Range.

Issued 16/X

hsp/14/10

Submitted after issue

Govt. have moved the H.C.
in the advice of the Govt
Govt results.

19/x

Dr. (Cdr.) Tyagi 19/10

169/53
HA

G.C.P.—(J) J 160—80000—10-52
G.O., L.D., No. 1163 dated 7-12-15

[Spl.—Govt. Pl. H. C. Bom. 8 e

No. 3347

From

THE GOVERNMENT PLEADER, HIGH COURT,
BOMBAY;

To

The Secretary to Government, Legal Department,
~~The Collector of~~
~~The District Magistrate of~~

Bombay, 10th April 1954

Sir,

With reference to ~~this office letter~~ No. C.R.C.D. Nos. 2094 & 2094/A, dated 16-10-1953

I have the honour to ~~return~~ forward herewith papers in the case as noted in the margin, ~~and to request the favour of your acknowledging the receipt thereof.~~

Criminal Revision

~~Appeal~~ Application No. 126 with Appeal 1521/53 (By State) of 1953 (By State)

Certified copies of High Court Judgment ~~and Decree~~

Two in

Yours faithfully,

Government Pleader, High Court.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 10744
Dak No. 13-4-54
Branch A

L. D.
12 APR 1954

L.D

Submitted.

Please see the High Court Judgment at p. 35-53 post. The result of the appeal and application may be recorded by a GR

13/4

Sd/- 13/4

Sd/- (HL) 14/4

Jt. Secy Sd/- 14/4

Secy (HD) 15/4

Sd/- 17/4

No. 9826/A
dt. 15/4

171

Judgment recorded by the High Court in Criminal Revision Application No. 1267 of 1953 (By State) with Criminal Appeal No. 1521 of 1953 in the case of State Vs. Dastagir Mira-sab No. 2 and another (in Criminal Appeal No. 1521 of 1953) (By State) and in the case of State Vs. Maktumsab Miyasab (Cri. Accd. No. 1) (in Criminal Revision Application No. 1267 of 1953 (By State).

The Government Pleader for the State (in both the cases).

Mr. N.M. Hungund, Advocate (appointed) for opponent-accused No. 1 (in Criminal Revision Application No. 1267/53) (By State).

Mr. N.M.Hungund, Advocate (appointed) for accused Nos. 2 and 3 (in Criminal Appeal No. 1521 of 1953 (By State).

(Coram: Covajee and Gajendragadkar JJ.)

23rd February 1954.

Oral Judgment (Per Gajendragadkar J.):—

Three persons were charged in the Court of the learned Sessions Judge at Bijapur with having committed offences under Secs. 449 and 302 read with Sec. 34 of the Indian Penal Code. The case against them was that on or about the 23rd November 1952 at about 2 p.m. at Hanchinal they committed house trespass by entering into the house of Dawalama wife of Nabisab Pinjar, and having trespassed into her house they committed the murder of Shiddanagouda Hanmantaraya Patil by intentionally causing his death with axe and dagger. The prosecution alleged that these offences were committed by the three accused in pursuance of their common intention. The learned Judge held that accus No.1 was guilty of the offence of murder under Sec. 302. He, however, took the view that the ends of Justice would be met if he is ordered to undergo transportation for life for the sai offence. According to the learned Judge, the two other accused were not guilty of the offence of murder as alleged by the prosecution, but that they were guilty of the offence under Sec 323 of the Indian Penal Code. He accordingly

convicted the said two accused of the offence under Section 323 and he directed them to undergo rigorous imprisonment for one year. In regard to the offence under Section 448, the learned Judge held that all the three accused were guilty of the said offence. He accordingly directed that they should all suffer rigorous imprisonment for one year for the said offence. The sentences imposed upon the three accused for the two separate offences were directed to run concurrently.

The State of Bombay have preferred a revisional application in the case of accused No.1 and they have prayed that the ends of justice require that accused No.1 should be ordered to be hanged. The State has also preferred an appeal in respect of the case against accused Nos. 2 and 3 and it is their contention in this appeal that the learned Sessions Judge was in error in coming to the conclusion that accused Nos. 2 and 3 were not guilty of the offence of murder under Sec. 302. It appears that the appeal preferred by all the three accused against the order of conviction passed against them was summarily dismissed by this Court.

The facts on which the prosecution rely in support of their case are few. The accused and the deceased are residents of Hanchihal. It would appear that the deceased Siddangouda had kept Davalama for the last 20 years and more. In fact, this illicit relationship began during the time of Davalama's husband. He died four years ago. Accused No.1 is the brother of the husband of the sister of Davalama. Accused No.2 is his maternal uncle and accused No.3 is a common friend. According to the prosecution, accused No.1 and accused No.2 did not like the idea that Davalama should have occupied the position of a keep in the same village where the parties resided and that acted as a motive for the commission of this offence. On the 23rd November 1952 Davalama was sitting in her shop. It appears

that she owns a house and in a part of the house she runs a grocery shop. At about 2 p.m. one Manappa went to the shop, bought tea powder and went away. About that time Siddangouda had come to her house and was sitting on the Katta near the cattle shed. Some time after Manappa had left the shop, accused No.1 entered the shop with an axe. He asked for betel, and having purchased betel as he was leaving the shop by the main door, he turned to the deceased and gave him blows with his axe. That led to some struggle between the victim and accused No.1 Davalama lent a -- helping hand to the victim by removing the axe from the hand of accused No.1. At this critical juncture accused Nos. 2 and 3 rushed to the house of Davalama. According to the prosecution, accused No.2 was then armed with a jambiya. Accused No.1 took this jambiya from the hand of accused No.2 and used it in stabbing the deceased. Accused No.2 held the legs of the deceased and accused No.3 held his head. After some time all the three accused lifted the deceased and threw him below the katta. Even thereafter accused No.2 gave two jambiya blows on the neck of the deceased, in consequence of which the deceased breathed his last. Accused No.2 snatched the axe from the hand of Davalama. During this process an injury was caused to her left forearm. All the three accused then left the scene of Offence and went into hiding. The prosecution allege that though the information of this offence was communicated to the outpost at Moratgi and from the said outpost the news was conveyed to the police station at Sindgi and the investigation of the offence began soon thereafter, the whereabouts of the accused could not be traced until the 27th November. On that date the -- Sub-Inspector heard reports that the three accused were hiding in the village of Byakod and it was on the 27th about midday that he managed to arrest them.

The prosecution case is supported by the evidence

of Davalama and her young son Mahibub. Davalama was present in the shop when this incident took place and she had described how accused No.1 came to her shop and while returning, suddenly turned to the deceased and gave him blows with his axe. It appears that before the attack commenced the deceased was sitting on a katta near the cattle shed. When blows were given by accused No.1 to the deceased a scuffle ensued between the parties; Davalama joined and took away the axe from the hand of accused No.1. During this scuffle the deceased moved from the katta near the cattle shed to the katta near the shop. It was at this place while the scuffle was going on after the axe had been taken away by Davalama from the hand of accused No.1,that accused Nos. 2 and 3 joined accused No.1. According to Davalama, when accused No.1 found that his axe had been taken away by Davalama, he took the jambiya from the hand of accused No.2, and gave blows to the deceased. All the three accused then lifted the deceased and threw him below the katta. Davalama swears that even after the deceased fell down, accused No.1 gave two jambiya blows on his neck. According to her accused No.2 snatched away the axe from her hand and that caused an injury to her left forearm. The relatives of the deceased learnt about this incident from Guduma who was sent by Davalama to give the news to them. They arrived on the scene and they were followed by Ninganagouda, the brother of the deceased. It was at the instance of Ninganagouda that the information was sent to the outpost and from there to the police station.

The only point on which cross-examination of this witness has succeeded is in reference to her prior statement about accused No.2. This witness does not appear to have told the police that accused No.2 came with a jambiya and accused No.1 took it from him. It also appears that she did not mention in her earlier statement that accused No.2 had held the legs and accused No.3 the head of the deceased

or that No.2 had snatched the axe from her hand. She had nevertheless mentioned in her statement that the two accused rushed on the scene soon after the axe had been taken away from accused No.1 ~~her~~ by her and that they joined the scuffle.

The evidence given by her son Mahibub is substantially similar to the evidence given by herself. Mahibub is a young lad of 10-11 years. But the learned Judge was well impressed with his evidence and he has taken the view that the account given by him as well as by his mother is on the whole a true account of what happened on this day. The evidence of Mahibub suffers from the same infirmities as that of his mother in that he did not describe the part played by accused Nos. 2 and 3 when accused No.1 was assaulting the deceased in detail and he did not mention the jambiya having been brought by accused No.2 and having been snatched from his hands by accused No.1.

Medical evidence shows that some of the injuries were caused by a jambiya and some by an axe. There were as many as 11 incised wounds on the person of the deceased and according to the doctor injuries Nos. 3,4 and 5 were each independently capable of causing death of the victim. Therefore, there can be no doubt whatever that whoever caused these injuries to the victim was guilty of murder. The doctor has specifically stated that injuries Nos.1 to 6 on the person of the deceased must have been caused by an instrument like the jambiya Article No. 9, whereas injuries Nos. 7 to 11 must have been caused by a sharp-edged cutting instrument like an axe. Therefore, the position is that on the medical evidence it is clear that two instruments have been used in causing injuries on the person of the deceased; one was an instrument like an axe and the other was a weapon like a jambiya. It is in the light of this medical evidence that we have to consider the effect of the contradictions which have been brought out in the evidence

of Davalama and her son. If this medical evidence had not definitely supported the prosecution case that two weapons had been used by accused No.1 in causing injuries on the body of the deceased, perhaps we would have hesitated to accept the story of the two witnesses that accused No.2 had brought a jambiya and that accused No.1 had taken it away from him for the purpose of inflicting blows on the body of the deceased. But the medical evidence clearly shows that two weapons were used and so the story deposed to by the two witnesses appears to be true despite the fact that the jambiya was not mentioned by them in their earlier statements. Realising the effect of the medical evidence on this material point, Mr. Hungund attempted to contend that the jambiya must have been carried by the deceased himself. Mr. Hungund does not seriously dispute the fact that the jambiya as well as the axe have been used in causing the injuries to the victim. He, however, contends that the jambiya was in the hands of the deceased and according to him it was because the deceased may have been in an aggressive frame of mind that accused No.1 was involved in the affray with him. We do not think there is any substance in this contention. If the deceased had carried the jambiya himself and was in an aggressive frame of mind, it is inconceivable that he would not have inflicted any major injuries on the person of accused No. 1. The story disclosed by the nature and the number of injuries inflicted on the deceased is fully consistent with the prosecution case that it was accused No. 1 who began the assault on his unsuspecting victim and if that be so the contention that the victim had a jambiya must be ruled out of consideration. Therefore, in our opinion, the contention raised by Mr. Hungund cannot be accepted that the jambiya was with the victim and was snatched away by accused No.1 in the course of the struggle.

There is another point to which reference must be made while we are dealing with the question of the jambiya. It has been proved in this case that on the 27th November 1952 accused No.1 produced the jambiya. Basappa the panch whose evidence we see no reason to disbelieve has sworn to the fact that after accused No.1 was produced before the panchas he stated that he would take the party to the place where he had concealed the jambiya and he in fact produced the jambiya from that place. Therefore, the production of the jambiya by accused No.1, which is clearly proved by the panch and the evidence of the panchamama corroborates the prosecution case that the jambiya was used by accused No.1 and in fact he ran away with it after he had finished dealing with his victim. Therefore, in our opinion, the learned Judge was right in holding that accused No.1 was guilty of the offence of murder. Since an application for enhancement has been made against accused No.1 we have permitted Mr. Hungund to argue the merits of the conviction and that is why we have dealt so far with the merits of the order of conviction itself.

On the question of sentence, however, though it must be conceded that the offence was a very cruel one, we do not think that we would be justified in interfering with the order passed by the learned Sessions Judge. The learned Sessions Judge took the view that in the circumstances of this case the ends of justice would be met if the lesser sentence is imposed on accused No.1. Even though another view may be possible, we do not think that as a Court of Appeal we would be justified in accepting that view and in enhancing the sentence to one of death. We do not propose to make any order on criminal Application No. 1267 of 1953.

The position with regard to the appeal preferred by State against accused Nos. 2 and 3 is, however, different. The learned Judge has accepted in substance the evidence given by Davalama and her son and he has found that

accused Nos. 2 and 3 joined accused No.1 in lifting up the victim and throwing him down from the katta. He, however, felt that it would not be possible to attribute to these two accused persons the common intention to commit the offence of murder and so he was disposed to convict accused Nos.2 and 3 of the offences under Secs. 323 and 448. Now, with respect, it is difficult to accept this conclusion. If the prosecution evidence is believed, accused Nos. 2 and 3 rushed on the scene of offence at a very important moment. It was exactly when Davalama removed the axe from the hand of accused No.1 that accused Nos. 2 and 3 came on the scene of the offence. That itself would lend support to the prosecution case that they were waiting in their -- respective places to see how the struggle was developing and they had decided to lend a helping hand to accused No.1 if and when it would be necessary to do so. Otherwise the simultaneous arrival of accused Nos. 2 and 3 on the scene of the offence and that too at a time when the weapon in the hands of accused No.1 had been removed by Davalama cannot be explained.

The second circumstance on which the prosecution is entitled to rely is that accused No.2 had brought a jambiya. I have already mentioned that despite the fact that the jambiya has not been mentioned by the two prose-cution witnesses in their earlier statements, we have accepted the prosecution case particularly in view of the medical evidence to which reference has been made. There-fore, if accused No.2 came with a jambiya and gave it off to accused No.1 to enable him to stab the victim, that again is a piece of conduct which is inconsistent with his innocence and which is wholly consistent with the theory that he entertained the common interntion of murdering the victim along with accused No.1. Both accused Nos. 2 and3

joined the affray. They lifted the victim and dropped him down from the katta and according to the prosecution evidence they assisted accused No.1 when he inflicted jambiya wounds even thereafter. It is perfectly true that since accused Nos. 2 and 3 had not come on the scene of the offence along with accused No.1 we would not be justified in attributing to them a common intention to commit the murder of Siddangouda unless there is evidence to show this common intention beyond a reasonable doubt. But the fact that they remained behind is not to their credit if we remember that they had remained behind just with a view to appear on the scene if and when it would be necessary to do so; and after they appeared on the scene of the offence they took such active part in the prosecution of the intended offence that we do not feel any difficulty in holding that they entertained the same common intention as accused No.1 and must, therefore, be held to be guilty of murder under Sec. 302 read with Sec. 34 of the Indian Penal Code.

Their subsequent conduct also is relevant, though -- of course the importance of this conduct cannot be exaggerated. All the three of them were hiding together in the village of Byakod and they were arrested together. It appears in evidence that at this time most of the villagers had gone to their fields for the purpose of cultivating the fields and yet we find these three accused persons nearabout the scene of the offence and as we have already mentioned the arrival of accused Nos. 2 and 3 on the scene at an important moment and their subsequent conduct irresistibly lead to the inference that there was a common intention between them and accused No.1 and because of this common intention they must also be held to be guilty under Sec. 302 read with Sec. 34. It is clear that if accused Nos.2 and 3 had not rushed to the scene perhaps the result of the fight between accused No.1 and the deceased might have been different.

HAT 7389

At that time Davalama held the axe in her hand. That is why the companions of accused No.1 rushed to his help in pursuance of the common intention. Therefore, we must set aside the finding of the learned Judge that accused Nos. 2 and 3 are guilty only of the offence under Sec. 323. In our opinion, they must be held guilty under Sec. 302 read with Sec. 34 of the Indian Penal Code.

We would accordingly allow the appeal preferred by the State against accused Nos. 2 and 3, set aside their conviction under Sec. 323 and instead convict them under Sec. 302 read with sec. 34. For this offence they must undergo transportation for life. This sentence and the sentence under Sec. 448 to run concurrently.

By the Court

Sd/- U.S.Hattangadi.
Assistant Registrar.

I.S.P./

Criminal Appeals.

In the High Court, Bombay --- .
for enhancement of sentence (Bijapur)

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 10775/A
Bombay Castle, 27th April 1954.

Read Government Resolution, Legal Department No.20947/A, dated the 16th October 1953.

In the Court of the Sessions Judge, Bijapur. Sessions Case No.23 of 1953. State vs. 1 Maktumsab Miyasab 2 Dastagir Mirasab 3 Rayappa Fakirappa (Offence under section 302 I.P.C.). s.w.s. 34 I.P.C.	Letter from the Government Pleader, High Court, Bombay No. 2043, dated the 5th March 1954 stating that

Criminal Appeal No.1521 of 1953, filed by Government against the acquittal of the Accused Nos.2 and 3 in the case noted in the margin, was heard by the High Court, Bombay, on 23rd February 1954 when the following order was passed:-

" The Court allows the appeal, sets aside the conviction recorded against accused Nos. 2 & 3 by the Sessions Judge, Bijapur, under Sec.323 I.P.Code, convicts them under Sec.302 r/w Sec.34 I.P.Code and sentences them to transportation for life. The sentences to run concurrently with the sentence under Sec.448. "

Letter from the Government Pleader, High Court, Bombay No.3347, dated the 10th April 1954 forwarding an uncertified copy of the High Court Judgement.

RESOLUTION: The result of the appeal is recorded.

By order and in the name of the
Governor of Bombay:

Submitted for signature
24/4
25/4
23/4

Original signed
(D.P.SHIKHARE),
Deputy Secretary to Government.

To
The Home Department,
The District Magistrate, Bijapur,
The Public Prosecutor, Bijapur,
The Deputy Inspector General of Police, S.R., Belgaum.

Issued
27/4/54

KYK/24.4

193

Criminal Applications.

In the High Court, Bombay ---
for enhancement of sentence (Bijapur).

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1076/A
Bombay Castle, 27th April 1954.

Read Government Resolution, Legal Department No. 2094/A dated the 16th October 1953.

In the Court of the Sessions Judge, Bijapur.	Letter from the Government Pleader, High Court, Bombay No. 2049, dated the 5th March 1954 stating that Cr.Rev.Appln. No.1267 of 1953, filed by Government for enhancement of the sentence of the accused No.1 in the case noted in the margin, was heard by the High Court, Bombay , on 23rd February 1954 when the following order was passed:-
Sessions Case No.23 of 1953.	
State vs. 1 Maktumsab Miyasab 2 Dastagir Mirasab 3 Rayappa Fakirappa	
(Offence under section 302 I.P.C.)	

" The Court makes no order on the application."

Letter from the Government Pleader, High Court, Bombay, No.3347, dated the 10th April 1954 forwarding an uncertified copy of the High Court Judgment.

RESOLUTION: The result of the application is recorded.

By order and in the name of the Governor of Bombay,

Submitted for signature
P24/4

Original signed

(D.P.SHIKHARE),
Deputy Secretary to Government.

DS(HL)

To
The Home Department,
The District Magistrate, Bijapur,
The Public Prosecutor, Bijapur,
The Deputy Inspector General of Police, S.R., Belgaum.

Issued 27/4

KYK/24.4

1974

Submitted after recess

A. Pell on behalf of Cr A Bj 1053

29/4

Sanjeev 29/4

DS(NL) 29/4

Cr. A. Bj 1053

30/4/54